Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT MOREIN, PETITIONER

v.

DREXEL UNIVERSITY, DR. CONSTANTINE PAPADAKIS, DR. ELI FROMM, DR. BRUCE EISENSTEIN, DR. PAUL KALATA, DR. MOSHE KAM

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

PETITION FOR WRIT OF CERTIORARI

FAYE RIVA COHEN
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134 pp

QUESTION PRESENTED FOR REVIEW

Whether an advanced educational institution has a right under statutes and common law to appropriate a student's intellectual property without providing compensation.

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No.

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v.

DREXEL UNIVERSITY, DR. CONSTANTINE PAPADAKIS, DR. ELI FROMM, DR. BRUCE EISENSTEIN, DR. PAUL KALATA, DR. MOSHE KAM

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

PETITION FOR WRIT OF CERTIORARI

Faye Riva Cohen, Esquire, on behalf of petitioner, Robert Morein, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania, Eastern District, in this case.

OPINIONS BELOW

The unreported order of the Supreme Court of Pennsylvania, Eastern District, denying petitioner's allowance of appeal, dated March 20, 2002, the judgment of which is sought in this petition to be reviewed, is reprinted in the Appendix to this petition (hereinafter "App.") at pp. 1a and 3a.

The unreported opinion of the Superior Court of Pennsylvania, dated June 28, 2001, and the Superior Court's August 20, 2001 denial of petitioner's application requesting reargument /reconsideration of its decision is reprinted in the Appendix to this petition (App 6a, 4a). The opinion of the Court of Common Pleas of Pennsylvania, Philadelphia County, is reported at 44 Pa.D. & C.4th 13 (2000). It appears in App. 45a-54a.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania, Eastern District, was entered on March 20, 2002. The jurisdiction of this court is invoked under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT

This case involves an important question of federal law that has not been, but should be, settled by this Court. The instant case involves a Ph.D. student, Robert Morein ("petitioner") who attended Drexel University in Philadelphia, Pennsylvania ("respondent", in the singular, is used to refer to all named respondents). In January 1997 petitioner commenced a civil action in the Court of Common Pleas of Pennsylvania, Philadelphia County ("lower court"). In his complaint petitioner raised many issues, among them, the federal issue that his thesis advisor, Dr. Paul Kalata ("thesis advisor") misappropriated petitioner's intellectual property and/or made use of petitioner's work for his own financial gain, and that the thesis advisor had a separate, contractual arrangement that directly conflicted with the academic interests of petitioner. There were also issues raised regarding whether respondent had a contractual or other legal duty to provide support, guidance and procedural due process to students who were paying tuition to respondent.

In July 1998 an arbitration panel ruled in respondent's favor, and petitioner appealed to the lower court. A trial was held before a lower court judge, which included the testimony of many witnesses, the admission of many exhibits, and the testimony of an expert on petitioner's behalf regarding the issue of petitioner's intellectual property (App. 114a). Therefore, the federal question regarding intellectual property and all of its legal connotations was raised and considered throughout the entire pleadings and trial stages.

On February 3, 2000 the lower court issued findings of fact, which, among other things, stated that petitioner's thesis advisor had a contractual financial relationship with a private corporation (App. 61a-67a) which he did not

immediately disclose to petitioner although he took petitioner's work to said company and received favorable reviews of the work (App. 47a). At the time the thesis advisor revealed petitioner's work to the company with which he was financially associated, respondent had an in-house program for student inventions and discoveries, which petitioner could have participated in. When petitioner was informed of his thesis advisor's actions a dispute arose between the parties, which included issues of domain and compensation. The lower court held that not only did the thesis advisor fail to provide petitioner with the personal relationship and guidance promised in respondent's literature, but he appropriated petitioner's academic work and shared it with the company with which he had both a financial relationship (App. 68a-71a) and obligations to share students' work product. He did so ostensibly for the financial gain of himself and said company (App., 45a-54a, 84a, 103a). Although the disclosure was made without his consent, petitioner, in the interest of preserving his relationship with his thesis advisor, agreed to pursue the patent with the company (App. 47a).

As a result of what he considered his thesis advisor's inappropriate actions and conflict based on self-interest, petitioner appealed to the chairman of his program for appointment of another thesis supervisor (App. 86a-92a). He also alleged that his thesis advisor had misappropriated his intellectual property, which had formed the basis for his doctoral dissertation, so that the company with whom the thesis advisor had a financial relationship could benefit from his work product.

An ancillary issue to the federal question involves respondent's actions regarding petitioner after he complained of matters involving misappropriation of his intellectual property. That issue is being presented in the interest of providing a complete record. Instead of another

advisor being appointed, a committee of four (4) professors was appointed, including the thesis advisor with whom petitioner had a poor relationship, and another professor who had a close relationship with the thesis advisor. The lower court determined that such a committee may not be permitted, allowed or convened. Petitioner, despite his best efforts, was permitted to meet only infrequently with the committee, and the committee did not provide him with guidance from 1990-1994 or suggestions as to how he could prepare his thesis. Furthermore, the advisor attempted to influence the committee after petitioner complained about him. The lower court determined that not only was the committee not composed by respondent in good faith, but the members of the committee did not act toward petitioner in good faith and were not capable of understanding petitioner's theories, which were highly advanced and proposed a novel approach to an electrical engineering problem. In 1995 petitioner's thesis presentation to the committee was deemed insufficient and petitioner was dismissed from the doctoral program because he had not completed the program in a timely manner.

In Pennsylvania trial courts have exhibited great reluctance in interfering in disputes between students and post-secondary institutions of learning. However, a student may bring a cause of action for breach of contract where the educational institution has breached written policies, guidelines, or procedures or has acted in an arbitrary or capricious manner. The lower court ruled that respondent did not fulfill its contractual responsibility to educate petitioner as it violated certain written provisions of the agreement between itself and petitioner and acted in an arbitrary and capricious manner with respect to petitioner. The contractual relationship referred to is derived from the case of *Swartley v. Hoffner, 734 A.2d 915,919 (Pa. Super. 1999), allocatur denied*, which held that "[t]he contract between a

private institution and a student is comprised of written guidelines, policies, and procedures contained in the written material distributed to the student over the course of their enrollment in the institition." The lower court held that respondent breached its duty to conduct a full and impartial investigation after petitioner lodged his complaints with respect to the thesis advisor's actions and awarded petitioner a choice of remedies. The alleged conflict regarding the patent application was never presented to respondent's intellectual property committee, as noted in its patent policy. This omission was distinguished by the state appellate court because it was contained in a handbook not distributed to students, only to faculty and administrators of respondent.

In a 2-1 decision of the state appellate court, with the president judge entering his dissent, (App. 31-36a), said court, although mentioning the theft of intellectual property issue, did not consider it with regard to the state or federal law, did not cite any statutes, laws or regulations regarding said issue, and based its opinion strictly on contractual and academic freedom precedent.

The state appellate court's president judge's particularly telling dissent noted that respondent's primary argument was based on academic freedom and the special privileges conferred upon universities several centuries ago. The amicus brief, filed on behalf of the American Council of Education, the Association of Independent Colleges and Universities of Pennsylvania, and eight (8) major secondary educational institutions in Pennsylvania, supported respondent's position on academic freedom.

The instant case involves the issue of misappropriation of commercially valuable information and its analogous trade secrets, namely a student's intellectual property, partially or wholly developed in an academic setting. This is not an ordinary patent case involving infringement. Interwoven in this matter are intellectual

property rights protected by the Fifth Amendment to the United States Constitution, which provides "nor shall private property be taken for public use, without just compensation" (App. 84a, 103a, 106a) students' due process rights and academic freedom of an advanced educational institution.

Restatement (Third) of Unfair Competition (1995) discusses these issues in various sections. Rest. 3d Uncom Sec.38, appropriation of trade values, states that [O]ne who causes harm to the commercial relations of another by appropriating the other's intangible trade values is subject to liability to the other for such harm only if (a) the actor is subject to liability for an appropriation of the other's trade secret (App. 87a) under the rules states in Sections 39-35 ...". Rest. 3d Uncom Sec.39 defines a trade secret as "any information that can be used in the operation of a business or other enterprise that is sufficiently valuable and secret to afford an actual or potential economic advantage over others". Rest. 3d Uncom Sec.40 states that "[O]ne is subject to liability for the appropriation of another's trade secret if: (b) the actor uses or discloses the other's trade secret without the other's consent and, at the time of the use or disclosure, (1) the actor knows or has reason to know that the information is a trade secret that the actor acquired under circumstances creating a duty of confidence owed by the actor to another under the rule stated in section 41...". Rest.3d Uncom Sec.41 states that "[A] person to whom a trade secret has been disclosed owes a duty of confidence to the owner of the trade secret for purposes of the rule stated in Section 40 if: (b) the trade secret was disclosed to the person under circumstances in which the relationship between the parties to the disclosure of the other facts surrounding the disclosure justify the conclusions that, at the time of the disclosure, (1) the person knew or had reason to know that the disclosure was intended to be in confidence, and (2) the other party to the disclosure was

reasonable in inferring that the person consented to an obligation of confidentiality."

The primary sources of protection for intangible trade values are the federal patent and copyright laws. Protection for patents are limited to innovations that are new, useful, and non-obvious to persons having ordinary skill in the art. The protection of trade secrets reflects the established interests in preserving confidential relationships and promoting physical security. In *International News Service v. Associated Press, 248 U.S. 215, 39 S. Ct. 68, 63 L.Ed. 211 (1918)* ("*I.N.S.*") this Court recognized a federal common tort law of "misappropriation" that afforded protection against the appropriation by a competitor of commercially valuable information otherwise in the public domain, such as intangible trade values. It provides an incentive to invent in the creation of intangible assets and prevents the potential unjust enrichment that may result from the appropriation of an investment made by another. Due to the improper actions of respondent, petitioner has lost his opportunity to patent his device and any revenue potentially generated therefrom.

It is conceded that the *I.N.S.* decision is sparingly applied on an ad hoc basis by the courts as there have been other means of protection, such as the federal patent and copyright statutes. The misappropriation argument has been balanced against the competitive and free market considerations of the economy and encourages the balancing of interests and whether relief can be justified on more traditional grounds. See *Nagle Industries, Inc. v. Ford Motor Co.*, 173 F.R.D.448, 452 (E.D. Mich. 1997). However the *I.N.S.* decision is typically applied to cases involving unusual circumstances. Id. at 453. The circumstances surrounding the instant matter are certainly unusual and, while not involving news reports, are extremely comparable to the issues discussed in *I.N.S.*

Furthermore, petitioner also has a claim for a violation of trade secrets. Clearly, information regarding the invention of a scientific device is valuable for whatever enterprise its developer, petitioner in this case, had in mind. This Court has recognized that trade secrets are property protected by the Fifth Amendment. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984). Furthermore, "a trade secret need not be patentable," nor does it have to be "novel" in the patent law sense. *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974), and distinguished in *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.* 489 U.S. 141, 109 S. Ct. 971, 103 L.Ed. 2d 118 (1989).

REASONS FOR GRANTING THE PETITION

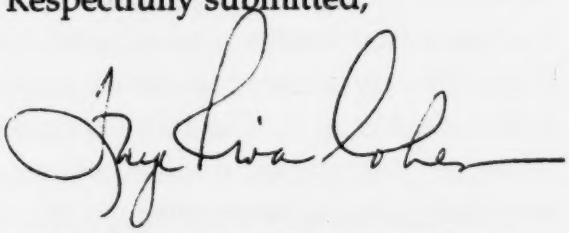
Post-graduate students in the United States have extremely limited rights under the laws of our country. On the other hand, advanced educational institutions assert enormous rights over students under the bastion of academic freedom. The federal question in the instant case of misappropriation of intellectual property rights and trade secrets in an academic setting, although it arises from the experience of one student, carries broad implications for all students. Academia asserts total control over students' intellectual property, including misappropriating said property and engaging in conduct designed to enrich institutions of higher learning and their faculty. The cloak of academic freedom was used by the state appellate court to avoid consideration of the above important federal question. In fact, said court was clearly wrong in not even mentioning or considering federal common law regarding the intellectual property issue. It further went so far as to overrule the lower court judge's opinion on the presumption that a student could not possibly be more intelligent than the

professors who reviewed his work. Said court also improperly distinguished the federal intellectual property issue from the academic freedom issue in its decision, when it clearly sanctified the conduct in an academic setting which would be prohibited, condemned, and illegal in a business setting. Without belaboring the issue, the time is ripe for this Honorable Court to determine whether students who develop intellectual property and trade secrets deserve the same rights as provided to other citizens in the United States under statute and common law.

CONCLUSION

For the above reasons, petitioner respectfully requests that his petition for a writ of certiorari should be granted.

Respectfully submitted,

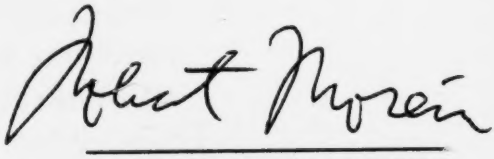


FAYE RIVA COHEN, ESQUIRE

December 4, 2002

VERIFICATION

I, ROBERT MOREIN, am the petitioner in this proceeding. I have read the above petition and the matters stated in it are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to unsworn falsification to authorities.



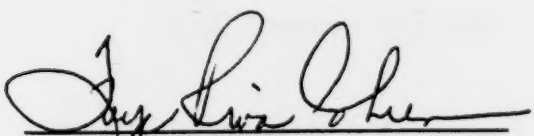
ROBERT MOREIN

Date: December 4, 2002

CERTIFICATE OF SERVICE

I, Faye Riva Cohen, Esquire, certify that on December 4, 2002, I served three (3) copies of the foregoing Petition for a Writ of Certiorari to the United States Supreme Court by first-class mail, postage prepaid, on the following:

Neil J. Hamburg, Esquire
Jane B. LaPorte, Esquire
Hamburg & Golden, P.C.
1601 Market Street, Suite 565
Philadelphia, PA 19103-1443
(215) 255-8590
Attorneys for Respondents



FAYE RIVA COHEN, ESQUIRE
Counsel of Record for Petitioner

No.

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT MOREIN, PETITIONER

v.

DREXEL UNIVERSITY, DR. CONSTANTINE PAPADAKIS, DR. ELI FROMM, DR. BRUCE EISENSTEIN, DR. PAUL KALATA, DR. MOSHE KAM

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

APPENDIX IN CONNECTION WITH PETITION FOR WRIT OF CERTIORARI

FAYE RIVA COHEN
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(215) 563-7776

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

ROBERT MOREIN,	:	Nos. 516 & 517 EAL 2001
	:	
Petitioner	:	Petition for
	:	Reconsideration of
	:	Denial of Allowance of
	:	Appeal
	:	
v.	:	
	:	
	:	
DREXEL UNIVERSITY, DR.	:	
CONSTANTINE PAPADAKIS,	:	
DR. ELI FROMM, DR. BRUCE	:	
EISENSTEIN, DR. PAUL	:	
KALATA, DR. MOSHE KAM	:	
	:	
Respondents	:	

ORDER

AND NOW, this 3rd day of May, 2002, the Petition for Reconsideration is DENIED.

TRUE COPY FROM RECORD
Attest: May 3 2002
S/John W. Person, Jr., Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

ROBERT MOREIN,	:	Nos. 516 & 517 EAL 2001
	:	
Petitioner,	:	Petition for Allowance to
	:	File Reply Brief
	:	
v.	:	
	:	
	:	
DREXEL UNIVERSITY, DR.	:	
CONSTANTINE PAPADAKIS,	:	
DR. ELI FROMM, DR. BRUCE	:	
EISENSTEIN, DR. PAUL	:	
KALATA, DR. MOSHE KAM	:	
	:	
Respondents	:	

ORDER

PER CURIAM

AND NOW, this 28th day of March, 2002, the Petition for Allowance to File Reply Brief is DENIED.

TRUE COPY FROM RECORD
Attest: MAR 28 2002
S/John W. Person, Jr., Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

ROBERT MOREIN,	:	Nos. 516 & 517 EAL 2001
	:	
Petitioner	:	Petition for Allowance of
	:	Appeal from the Order
	:	of the Superior Court
v.	:	
	:	
	:	
DREXEL UNIVERSITY, DR.	:	
CONSTANTINE PAPADAKIS,	:	
DR. ELI FROMM, DR. BRUCE	:	
EISENSTEIN, DR. PAUL	:	
KALATA, DR. MOSHE KAM	:	
	:	
Respondents	:	

ORDER

AND NOW, this 20th day of March, 2002, the Petition for Allowance of Appeal is DENIED.

TRUE COPY FROM RECORD
Attest: MAR 21 2002
S/John W. Person, Jr., Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania

J. A41042/00

ROBERT MOREIN,	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
Appellee	:	
	:	
V.	:	
DREXEL UNIVERSITY,	:	
DR. CONSTANTINE	:	
PAPADAKIS,	:	
DR. ELI FROMM,	:	
DR. BRUCE EISENSTEIN,	:	
DR. PAUL KALATA,	:	
DR. MOSHE KAM,	:	
	:	No. 1117 EDA 2000
Appellants	:	No. 1258 EDA 2000

ORDER

AND NOW, this 30th day of August, 2001, IT IS HEREBY ORDERED:

THAT the application filed July 11, 2001, requesting reargument/reconsideration of the decision dated June 28, 2001 is DENIED.

PER CURIAM

J. A41042/00

ROBERT MOREIN,	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
Appellee	:	
	:	
V.	:	
DREXEL UNIVERSITY,	:	
DR. CONSTANTINE	:	
PAPADAKIS,	:	
DR. ELI FROMM,	:	
DR. BRUCE EISENSTEIN,	:	
DR. PAUL KALATA,	:	
DR. MOSHE KAM,	:	
	:	No. 1117 EDA 2000
Appellants	:	No. 1258 EDA 2000

ORDER

AND NOW, this 24th day July, 2001, following consideration of appellants' motion to convert the memorandum of disposition to a published opinion, the motion is DENIED.

PER CURIAM

J. A41042/00

ROBERT MOREIN,	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
Appellee	:	
v.	:	
	:	
DREXEL UNIVERSITY,	:	
DR. CONSTANTINE	:	
PAPADAKIS,	:	
DR. ELI FROMM,	:	
DR. BRUCE EISENSTEIN,	:	
DR. PAUL KALATA,	:	
DR. MOSHE KAM,	:	
	:	No. 1117 EDA 2000
Appellant	:	

Appeal from the Order dated March 9, 2000
In the Court of Common Pleas of Philadelphia County
Civil No. 03418, January Term 1997

ROBERT MOREIN,	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
Appellee	:	
	:	
V.	:	
DREXEL UNIVERSITY,	:	
DR. CONSTANTINE	:	
PAPADAKIS,	:	
DR. ELI FROMM,	:	
DR. BRUCE EISENSTEIN,	:	
DR. PAUL KALATA,	:	
DR. MOSHE KAM,	:	
	:	No. 1258 EDA 2000
Appellant	:	

Appeal from the Order dated April 5, 2000
In the Court of Common Pleas of Philadelphia County
Civil No. 03418, January Term 1997

BEFORE: MCEWEN, P.J. TODD and MONTEMURO*, JJ.

FILED JUN 28 2001

MEMORANDUM:**

This is an appeal from a judgment in favor of Appellee, Robert Morein, in an action seeking redress for breach of an implied contract.

In the winter term of 1986-87, Appellee enrolled in Appellant Drexel University as a post-master's degree student in electrical engineering, having failed to receive a Ph.D. from Temple University during seven years as a graduate student there in a different discipline.[1] Appellee completed his course work for the doctorate at Drexel by the spring of 1989, and shortly thereafter asked Dr. Paul Kalata to act as his thesis advisor, as they had worked together in Appellee's area of concentration.[2] In June of 1990 he sat for and passed the qualifying examination required for doctoral candidacy.[3] At that time, the examining committee selected by Appellee, which consisted of Dr. Moshe Kam, Chairman, Dr. L.A. Trachtenberg, Dr. Stanley Zeitz, Dr. Itzak Bar-Kana, and Dr. Paul Kalata, noted in its report that Appellee's approach to problems lacked sufficient mathematical rigor and precision.

---

*Retired Justice assigned to Superior Court.

**This decision was reached prior to the expiration of Justice Montemuro's assignment to the Superior Court of Pennsylvania.

[1]Appellant received a Master's Degree from Temple in 1981, and remained there until 1985.

The committee therefore recommended that Appellee formally enroll in several courses and audit at least one other,[4] but permitted him to proceed with preparation of his dissertation. Shortly thereafter, Appellant Kalata wasformally approved as Appellee's thesis advisor. In August of 1990, Appellee was informed by the University administration that he had one year to complete his Ph.D. within the five year time frame established by school policy.

Appellee had expressed to Dr. Kalata an interest in having the idea for his doctoral dissertation patented, but lacked the financial resources to do so. Therefore, at Dr. Kalata's suggestion, the company for which he consulted, K-Tron, undertook to finance the patent application at its sole expense, and to that end retained attorneys to prosecute the application. With Appellee and Dr. Kalata named as joint inventors, the application was filed on March 21, 1990. On May 3, 1990, Dr. Kalata assigned his interest to K-Tron without compensation, and on May 15, 1990, Appellee, with counsel, entered into an agreement with the company concerning ownership of the patent. Ultimately, K-Tron discontinued its prosecution of the patent application, leaving Appellee as the sole beneficiary of its efforts, and informing him that he might proceed on his own. He did not pursue this option, failing even to acknowledge the letter informing him of K-Tron's renunciation of interest in the patent.

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[2] Contrary to the testimony in the record, the trial court finds that Dr. Kalata was assigned to this responsibility. See Findings of Fact and Conclusions of Law at 2, ¶ 7.

[3] The trial court notes that Appellee's grade point average for these courses was 3.8. According to the Graduate Student Bulletin, a 3.0 grade point average is the minimum required to pass. See Graduate Bulletin 1986-87, at 7.

[4] Appellee took none of the recommended courses.

In June of 1991, Appellee complained to the Chairman of the Electrical Engineering Department, Dr. Bruce Eisenstein, that his relationship with Dr. Kalata had soured. He asserted that Dr. Kalata had lost faith in his abilities, and had ceased to provide him with the competent supervision and guidance necessary for him to produce a viable thesis.[5]

In addition, Appellee alleged that Dr. Kalata had "appropriated" (Exhibit 20, Letter of from Morein to Dr. Elsenstein, dated 6/6/91, at 2), the idea which had formed the basis for his doctoral dissertation so that K-Tron might obtain the patent. The unmistakable implication of the letter was that Appellee was coerced into relinquishing to Dr. Kalata/K-Tron his right to the idea as a *quid pro quo* for assistance with his thesis. Appellee also recited a number of other complaints against Dr. Kalata, and ended with an announcement of his intention to obtain another advisor.[6] In response, Dr. Eisenstein convened a special advisory committee to review Appellee's dissertation work consisting of Drs. Kalata, Kam, Guez and Trachtenberg.[7]

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[5]The trial court found that Dr. Kalata had "not published any articles in his field for several years and had a poor record as a thesis advisor." (Findings of Fact and Conclusions of Law at 2, ¶ 8). Dr. Kalata's *curriculum vitae* presents a list of 39 publications between 1986 and time of trial, along with 3 research and technical reports, 8 seminars and 9 research grants. Moreover, Dr. Kam explained that Dr. Kalata was very interested in building undergraduate control engineering laboratories, which left him little time to advise Ph.D. candidates. (N.T. Trial, 4/22/99, at 145). Since then, however, Dr. Kalata has graduated 2 other Ph.D. candidates with 2 more in progress. As of the time of trial, Dr. Kalata had also graduated 12 masters' students and served on 14 Ph.D. and 26 M.S. committees.

In September of 1991, Appellee submitted a draft of his thesis to the committee, which responded with a detailed letter, signed by all four members, listing the criteria for preparation of a viable thesis. Indeed, Appellee referred to it as "the penguin guide to writing a thesis." (N.T., 4/21/99, at 207). The letter, after noting that Appellee's paper omitted a large number of definitions, pointed out that the paper failed to adhere to the methodology common in the preparation of technical papers and provided an outline of the required organizational format with comments as to the deficiencies exhibited by Appellee's draft.

The letter also recommended that Appellee review two specific papers to be used as models.[8] Among the comments appended to the explanation of what elements the introduction should contain, the following was noted: "A.2) If your approach has a clear advantage over existing techniques -- what exactly is it? This point should have been made already in the introduction." (Exhibit 23, Letter from Special Advisory Committee to Morein, dated 9/16/91 at 2)(emphasis in original).

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[6] One of the complaints in the letter was that he "did not suspect that the requirements of an academic thesis proposal were of an entirely different nature" than a grant proposal, (Exhibit 20, Letter of from Morein to Dr. Eisenstein, dated 6/6/91, at 3), the latter produced allegedly for Dr. Kalata's benefit. At this point Appellee had been a graduate student, including the time spent at Temple, for approximately 12 years.

[7] Appellee unsuccessfully approached Drs. Kam, Guez, and Trachtenberg as alternative advisors. *See* N.T., 4/21/99, at 109, 116.

Appellee continued to encounter difficulties with his thesis. Despite Appellee's plaint that he received no feedback on his work, the record contains several papers submitted to Dr. Kam for review and returned to Appellee with numerous comments handwritten in the margins. At some point, apparently in late 1993 or early 1994, Appellee began a collaboration with Dr. Oteh Tretiak, described by Appellee as his only source of assistance on the faculty, who offered editorial help. Dr. Tretiak's recommendations included one made and acknowledged in 1994, three years subsequent to the advisory committee's letter, that Appellee's work advance some claim regarding the advantages of his system over previous ones. Dr. Tretiak, too, ultimately concluded that Appellee's work failed to demonstrate adequate progress. He testified that Appellee "would take the things that I suggested into account, but then he would do other things too at the same time," (N.T., 4/23/99, at 13), which were unacceptable. In February of 1995, Appellee was requested by the committee to present a truncated version of his thesis proposal following certain specific instructions as to clarity and brevity. He failed to follow those instructions, and on the unanimous recommendation of the committee, including Dr. Tretiak, he was dismissed from the program, eight years after his matriculation.

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[8] Appellee testified at trial that he may have reviewed one of these documents. At the arbitration hearing, however, he testified that he had not followed this instruction.

In 1997, suit was commenced against Drexel University; its president, Dr. Constantine Papadakis; its Vice Provost, Dr. Eli Fromm; Chairman of the Department of Electrical Engineering, Dr. Bruce Eisenstein; and professors of engineering Drs. Paul Kalata and Moshe Kam, on grounds that the University, and the named staff and faculty had breached their contractual obligations to Appellee, had been "negligent [in their] fail[ure] to deliver the appropriate standard of academic services," (Complaint at ¶ 14), had denied Appellee due process, and through Appellant Dr. Kalata, had "appropriated [Appellee's] intellectual property[.]" (*Id.* at ¶ 27). An arbitrators' verdict in favor of Appellants was appealed to the Philadelphia Court of Common Pleas. After a trial *de novo,* the instant judgment was entered in favor of Appellee permitting him to elect either money damages in the form of tuition reimbursement plus interest for breach of contract, or reinstatement in the doctoral program as damages for bad faith, and, irrespective of the option selected, expungement of the administrative F's entered on Appellee's transcript. The trial court also awarded Appellee attorney's fees, later rescinded on Appellants' Motion for Reconsideration. This appeal followed, raising three issues. The first two of these are grounded on the same theory, that the trial court misconstrued the contractual basis of the parties' relationship as implied in the various written materials containing the University's policies and distributed to its students. Specifically, Appellants contend that the court erred in finding they breached a contract with Appellee, and that the University's decision to dismiss Appellee from the doctorate program was arbitrary and motivated by bad faith. The third issue challenges the trial court's discretion in permitting the testimony of Appellee's expert witnesses.

We note preliminarily that "[o]ur scope of review in a non-jury trial is limited to whether findings of fact are supported by competent evidence andwhether the trial court committed an error of law." ***Roman Mosaic and Tile Company v. Carney,*** 729 A.2d 73, 76 (Pa. Super. 1999). Moreover, "[the]he interpretation of a contract is as a matter of law, and an appellate court need not defer to the conclusions of the trial court" ***Id.*** at 77. When reviewing the trial court's findings, we must view the evidence in the light most favorable to the party victorious below, and, as always, defer to the fact finder's credibility determinations. ***Id.*** "We are bound by the findings of the trial court which have adequate support in the record, so long as the findings do not evince capricious disregard for competent and credible evidence." ***Gemini Equipment v Pennsy Supply, Inc.,*** 595 A.2d 1211, 1214 (Pa. Super. 1991). ***See In Re Estate of Banks,*** 189 A.2d 154, 156 (Pa. 1963) (findings of fact may be overruled if they are "clearly or manifestly erroneous or were arbitrarily made or if the record indicates that the trial judge failed to comprehend and understand the evidence").

Historically, courts have been reluctant to interfere with academic decisions. "[T]he determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision-making." ***Board of Curators of the University of Missouri v. Horowitz,*** 435 U.S. 78, 90 (1978). Indeed, "~a]cademic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also, and somewhat inconsistently, on autonomous decisionmaking by the academy itself." ***Regents of the University of Michigan v. Ewing,*** 474 U.S. 214, 226 n.12 (1985) (citations omitted). Therefore,

> [w]hen judges are asked to review the substance of a genuinely academic decision,

such as this one, they should show **great respect** for the faculty's professional judgment.[9] Plainly, they may not override it unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment.

Id. at 225 (emphasis added) (footnote omitted).

Recently, our Court has refined this general proposition to permit students who have been dismissed from a college or university for purely academic reasons to sue for either breach of contract or arbitrary and capricious decision making. ***See Swartley v. Hoffner,*** 734 A.2d 915 (Pa. Super. 1999). Notably, Pennsylvania does not recognize a cause of action for educational malpractice, ***i.e.,*** a claim that the college or university failed to provide a "quality" education, because

> [i]t would be unwise to inject the judiciary into an area where it would be called upon to make judgments despite often insurmountable difficulties both in the formulation of an adequate standard of care and in finding a causal link between the alleged breach and the alleged damages.

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9 The trial court fails to acknowledge this general principle in its Findings of Fact and Conclusions of Law. *Id.* (citing ***Merrow v. Goldberg,*** 672 F. Supp. 766, 774 (D. Vt. 1987) ("The terms of the contract are contained in the brochures, course offering bulletins, and other official statements, policies and publications of the institution. If a student performs financially, **academically** and behaviorally in accordance with the college rules and regulations, he is entitled to the credits in the courses in which he enrolled.") (citation omitted) (emphasis added)).

Cavaliere v. Duff's Business Institute, 605 A.2d 397, 403 (Pa. Super. 1992).

Because the relationship between a university and its students is contractual in nature, we held in ***Swartley, supra,*** that aggrieved students can bring a cause of action against the institution for breach of contract when the institution violates or ignores provisions of a **written** contract. ***Id.*** at 919. This contract consists of, collectively, the "written guidelines, policies, and procedures as contained in the written materials distributed to the student over the course of hils] enrollment in the institution."

In addition, the ***Swartley*** Court authorized a cause of action if the university's academic decision was made in an arbitrary or capricious manner. Recognizing that Pennsylvania "abides by a general policy of nonintervention in purely academic matters [,]" the Court limited our review of such decisions. ***Swartley, supra*** at 921. [W]e must determine whether "a decision to fail a student was rational and had a reasonable basis in fact in order to determine if impermissible factors were operative." ***Moire v. Temple University School of Medicine,*** 613 F. Supp. 1360, 1371 (E.D.Pa. 1985). More specifically, we must review the case in order to determine whether "there is no rational basis for the university's decision or [whether] the decision . . . was motivated by bad faith or ill will unrelated to academic performance." ***Stoller v. College of Medicine, The Milton S. Hershey Medical Center,*** 562 F. Supp. 403, 412 (M.D. Pa. 1983) (citations omitted). Id.

Appellants argue that the trial court erred in substituting its judgment for that of the University's faculty. Specifically, they refer to the main themes of the trial court's opinion:

(1) that " [f]rom the time of his admission into the doctoral program in 1990 until June of 1994, [Appellee] did not receive any guidance as to how he should proceed with respect to the preparation of his doctoral thesis." (Findings of Fact and Conclusions of Law at 4, ¶J 20).

(2) and, that after the special advisory committee was convened, although Appellee's work was reviewed every six months," tjhe individuals reviewing the work were not capable of understanding [Appellee's] theories which were highly advanced and proposed a novel approach to the problem upon which he was working." (*Id.* at 3-4, 11 19).

Moreover, Appellants contend that the trial court erred in determining that they breached specific and identifiable portions of a written contract between the University and Appellee; in adding a new obligation to those to be extrapolated from the policy documents; and in finding that Appellee's expulsion was "motivated by bad faith and ill will." (*Id.* at 8).

The trial court begins its discussion by observing, correctly, that [t]rial courts are usually reluctant to interfere in disputes between students and post-secondary institutions of learning." (Findings of Fact and Conclusions of Law at 4). Indeed, reluctance is an understatement of the reserve with which such disputes should be approached.

First, the trial court found that Drexel "breached the standards of care and duties prescribed" by its 1986-87 Graduate Bulletin. (Findings of Fact and Conclusions of Law, at 6). Specifically, the court relies on the following language: "The Graduate School consists of faculty members who **teach and direct** the scholarly activities of selected post-

baccalaureate students who are pursuing advanced study [,]"and "[t]he **personal relationship** between professor and student, which arises from the dissertation, is recognized as teaching/learning of the highest order." (Exhibit 1, Graduate Bulletin 1986-87, at 6) (emphasis added).

The trial court found the breach of this contract to have been accomplished by the failure of Appellants to provide Appellee "with meaningful or constructive guidance by his advisor in respect to his field of study which concerned noise reduction in certain types of sensors." (Findings of Fact and Conclusions of Law at 2, ¶1 9). Moreover, Dr. Kalata "failed to provide the personal relationship with the plaintiff promised by the Graduate Bulletin." (*Id.* at 6). The trial court further found that the appointment of a special advisory committee rather than an individual advisor also violated the contractual relationship, since the Bulletin does not mention that such a committee might be convened. Finally, it is concluded that the University breached the agreement with Appellee set forth in the Bulletin by having failed to follow its own grievance procedures in investigating Appellee's complaints of Dr. Kalata.

The Graduate Bulletin which provides the basis for the contract claims is, as the above quoted language demonstrates, scarcely a detailed agreement. Its internal logic makes clear it was never meant to be minutely specific, as the Bulletin also states:

> Doctor of Philosophy programs are quite flexible, for it is at this level that the educational process becomes very personal. The main requirement for the Ph.D. degree is the attainment of a high level of accomplishment as judged by the appropriate faculty. . . . In general, the successful Ph.D. candidate must attain comprehensive mastery of his/her own field and must successfully demonstrate ability to apply

that mastery to an original and creative research problem.

(Exhibit 1, Graduate Bulletin 1986-87, at 6). Further, in order to become a Ph.D. candidate, the student must sit for examinations, the purpose of which is to determine the student's ability and achievement at this point; particularly with regard to leadership and self-motivation, to ascertain his/her understanding of the fundamental concepts and ideas pertinent to the field of his/her endeavor, and to detect any deficiencies of background that may need further attention. (*Id.* at 16).

We find that the provisions in the Graduate Bulletin cited by the trial court in its Findings of Fact and Conclusions of Law do not constitute part of the contract between Drexel and Appellee. Pursuant to *Swartley,* the contract between a university and its student is "comprised of the written guidelines, policies, and procedures" distributed to the student during his course of enrollment. *Swartley, supra* at 919. The language cited by the trial court is found in the introductory paragraphs of the Graduate Bulletin, and clearly does not constitute guidelines, policies or procedures of the University.

We find the decision in *Jansen v. Emory University,* 440 F. Supp. 1060 (N.D. Ga. 1977), instructive on this point. There, the United States District Court for the Northern District of Georgia was presented with a contract dispute between a student and Emory University which had dismissed him from its dental school on the basis of poor academic performance and deficiencies in his technical skill and competence. The student advanced a due process argument based on the following language in a University Bulletin: "Attendance at Emory is a privilege and not a right; however, no student will be dismissed without due process." *Jansen, supra* at 1062 (citing February 1, 1975, Bulletin of Emory University). Accordingly, the student

asserted that he was entitled to "the entire panoply of due process rights," *(Id.)*, such as notice and a hearing. The court rejected this interpretation of the language, describing it as "extravagant." *(Id.)*. Pointing out that the relationship between a state and its citizens is not replicated by that which exists between students and a private educational institution, the court observed that its "decision need not and should not be controlled by a mechanistic application of the law of contracts." *Id.* at 621. Given the nature of the contractual language involved, the same is true here.

Moreover, claims of negligence appear specifically in Appellee's Complaint relative to his assertions of Appellants' failure to perform under the contract, and are echoed in the court's finding that what was breached were "standards of care." (Findings of Fact and Conclusions of Law, at 6). However, these claims sound in educational malpractice, a cause of action not recognized in this Commonwealth, rather than breach of contract. Indeed, a challenge to the quality of instruction received "invites the court to enter into precisely the kind of generalized review of the entire course of instruction that so many other courts have wisely refrained from doing."[10] ***Cavaliere, supra*** at 404.

The trial court also found that Drexel breached its contract with Appellee when Dr. Elsenstein appointed a Special Advisory Committee to review Appellee's research, rather than simply naming a new thesis advisor. The court concluded that "nowhere in the previously mentioned Bulletin does it permit, allow, or even mention that such a committee might be convened." (Findings of Fact and Conclusions of Law, at 7). However, the contrary is also true; that is, the Graduate Bulletin does not **prohibit** the formation of a Special Advisory Committee when a candidate's relationship with his thesis advisor deteriorates. Indeed, Dr. Kam commented that at the time the Committee was formed Appellee had worked with several other faculty

members "and the results, overall, were not satisfactory." (N.T. Trial, 4/22/99, at 170). Therefore, because the appointment of a Special Advisory Committee did not violate a specific written policy, the trial court erred in finding a breach of contract on that basis.

We also note that both during his testimony and in his brief to this Court, Appellee contends that Appellants breached an "implied" contract. **See** N.T., 4/21/99, at 184 ("I felt there was an . . . implied contract to act with good will, to provide reasonable facilities, reasonable counseling, not to guarantee anything, but certainly to make sure that things

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10 The trial court relies on a memo written by Dr. Kalata to Drs. Kam and Freedman as evidence that Dr. Kalata had abjured all responsibility for Appellee's successful completion of his doctorate. The memo was written in response to Appellee's request that Dr. Kalata sign certain drop/add slips and report grades for Appellee's thesis research. Although Dr. Kalata signed the forms, he noted that he was not "encouraging or discouraging" Appellee's research, and that it was Appellee's responsibility to seek "appropriate advice" regarding his activities. (Exhibit 28, Memo from Kalata to Kam and Freedman, dated 3/27/92). Although the trial court concluded that this memo "clearly indicated the degree to which Dr. Kalata} has abdicated his responsibilities toward Appellee," (Findings of Fact and Conclusions of Law, at 7), the court disregarded the fact that the memo was written in March 1992, after Dr. Kalata had already been removed as Appellee's thesis advisor and replaced by the Special Advisory Committee. However, such a claim is not actionable. In an academic setting, a breach of contract claim must be "linked to the **written** policies of the university." ***Swartley, supra*** at 919 (emphasis added).

were not stacked against the student due to relationships, personal relationships which have gone awry."); Appellee's Brief at 5.

After his dismissal from the program, Appellee appealed to the Vice Provost, Dr. Eli Fromm. During his deposition, Dr. Fromm explained that, as part of his investigation of Appellee's claims, he met with the faculty identified by Appellee, that is, Drs. Kalata, Kam and Eisenstein, and reviewed numerous documents. (Oral Deposition of Eli Fromm, Ph.D., 4/19/99, at 57-58). He did not, however, meet with Appellee personally because he believed a face-to-face meeting would be unnecessarily confrontational. (***Id.*** at 57). Dr. Fromm investigated Appellee's allegation of "a conflict in the way Professor Kalata dealt with his invention," and concluded that "there appeared to be nothing improper with respect to Drexel's involvement in any of this — or the relationship between the faculty member and Drexel and it was not considered an issue." (***Id.*** at 36-37). Neither Appellee nor the trial court suggests what additional steps the University should have taken to investigate Appellee's claims.

Appellee also argues that Drexel violated its own patent policy when it failed to follow the written procedures for investigating matters regarding University patents and other intellectual property, *i.e.*, by submitting the matter to the University Intellectual Property Committee. **See** Exhibit 2, Faculty and Administrators Handbook, at 44. However, the University's patent policy is found in the Faculty and Administrators Handbook; therefore, it is not "contained in the written materials distributed to the student over the course of his] enrollment in the institution." ***Swartley, supra*** at 919. Thus, in this regard no breach occurred of a contract to which Appellee was a party.

The trial court also concluded that Drexel's faculty was motivated by bad faith and ill will when it dismissed Appellee from the doctoral program. In support of this determination, the court reasoned that: a) "the individuals reviewing Appellee's] work were not capable of understanding [Appellee's] theories which were highly advanced and proposed a novel approach to the problem upon which he was working [,]" (Trial Ct. Findings of Fact and Conclusions of Law, at ¶ 19); b) the Special Advisory Committee was incapable of reviewing Appellee's work objectively, as Dr. Kalata attempted to influence the other committee members; c) Dr. Kam either refused or was unable to provide appropriate guidance to Appellee; d) Dr. Kalata appropriated Appellee's patent for his own financial gain; and e) Drexel failed to address Appellee's complaints regarding Dr. Kalata adequately.

The most disturbing of the trial court's findings is its first, namely, that the faculty reviewing Appellee's work was incapable of understanding it." Here, contrary to the principles of academic abstention, the trial court disregarded the faculty's judgment. After having found breach of contract, the court determined that its intervention was justified by Appellants' "bad faith and ill will" in terminating Appellee.

The court noted that " this conclusion is based on the fact that Dr. Kalata and some of the committee formed to replace Dr. Kalata as thesis advisorj lacked the training necessary to understand the nature of the research plaintiff was pursuing." (Findings of Fact and Conclusions of Law, at 8). Neither the evidence for this conclusion nor the logic applied to reach it is altogether clear. However, the court's statement points ineluctably to the fact that what is involved is a matter of academic decision, otherwise the **quality** of the professor/Appellants' training would not offer the trial court a target for its derision. In making its pronouncement,

the court has favorably assessed the quality of Appellee's work product, but dismissed as deficient the abilities of all those who concluded otherwise, measuring them against a standard which is never disclosed. Essentially, the trial court has unilaterally declared the intellectual incompetence of at least four, if not more, of the members of the electrical engineering department of the University.

In ***Horowitz, supra,*** the United States Supreme Court, observing that cjourts are particularly ill-equipped to evaluate academic performance," held that

> [l]ike the decision of an individual professor as to the proper grade for d student in his course, the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative information and is not readily adapted to the procedural tools of judicial or administrative decision-making.

Id. at 90.

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[11]As Amicus describes this decision in its brief, "[i]n other words, the Trial Court found that a student unable to obtain a Ph.D. at two institutions after 15 years was superior in educational and intellectual achievement to his advisor -- - a tenured engineering professor in Drexel's engineering department —- and the entire faculty committee appointed to review Plaintiff's work." (Amicus Brief at 10). Moreover, at the arbitration hearing, Appellee admitted to having used information from course work with Dr. Kalata in developing the technology for his thesis. Interestingly, the specific deficiencies of the other putatively unqualified members of the Committee are not identified by Appellee or by the court.[12] We accordingly find that the court has erred in this regard.

The trial court's determination here underscores the accuracy of this observation. There is no evidence in the record, even when viewed in the light most favorable to Appellee, which would justify the court's wholesale dismissal of the academic qualifications of those members of the electrical engineering department who sat on Appellee's advisory committee. On the contrary, even Appellee admitted that Dr. Kalata "had provided valuable orientation toward the problem," that his "questioning and probing were valuable in improving the presentation of the idea." (Exhibit 20, Letter from Morein to Dr. Eisenstein, dated 6/6/91, at 1), and that he had received useful suggestions for the improvement of his work from both Drs. Zeitz and Tretiak.

The problems with Appellee's work were already apparent in June of 1990, when Appellee took his candidacy exam. This occurred prior to any claim that Appellee's work was advanced beyond the comprehension of the examiners. Appellee failed to seek the remediation recommended by the committee, and the shortcomings of his performance observed by the committee echo in all of the later comments on his work.

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12 Indeed, Appellee himself never testified that Drexel's faculty was incapable of understanding his work. Rather, he believed that the faculty members were predisposed against his conclusions. Specifically, Appellee testified that he respected Dr. Kam's credentials "very much," but that the mistakes in Appellee's papers offended Dr. Kam "and somehow induced a reaction that made him refuse to consider Appellee's work] further." (NJ. Trial, 4/22/99, at 49).

What were initially isolated as the most salient deficiencies of Appellee's presentations, lack of organization, incoherence, mathematical errors, failure to define terms, to name a few, never improved irrespective of who pointed out the problem.

Drs. Kalata, Kam, and Tretiak, as well as a reviewer of an article submitted for a peer review publication, found, one after the other, that Appellee's work lacked certain basic elements necessary to convey his theory properly and lucidly. What resulted was that abstractions became not merely abstruse, but opaque even to a technically trained observer. Indeed, the reviewer, presumably an objective judge, reported that the purpose of Appellee's paper was stated "only marginally," that the paper's significance relative to previous work was not explained, and that it was neither clearly written nor well organized. (Exhibit 84, Letter from Kuo-Chu Chang, Editor for Navigation/Tracking to Morein, dated 1/18/94, re paper submitted to IEEE[13] *Transactions on Aerospace and Electronic Systems).* The critique lists what it calls "many obvious mathematical mistakes," and notes that "symbols are used without proper definition or proper(sic) explanations." ***(Id.*** at Comments, at 1-2). These, as well as other faults mentioned by the reviewer, reflect problems endemic to Appellant's work from the outset and repeatedly pointed out in the editorial comments of Drs. Kam, Tretiak and members of the dissertation committee. [14] It is these deficiencies, and Appellee's failure over the eight years of his participation in the doctoral program to remedy them, which provide the rational basis for the decision to dismiss.

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[13] Institute of Electrical and Electronics Engineers.

In ***Swartley, supra,*** after the plaintiff/appellant, a doctoral candidate, had presented the oral defense of her dissertation in the field of industrial engineering, three of the five members of her review committee declined to award her a Ph.D. She instituted suit against the University and the three professors who had voted to fail her, alleging that they had breached their contractual undertaking to educate her, and had acted in an arbitrary and capricious manner. We agreed that the relationship between student and school was contractual and that suit might be brought on that basis, but declined to find that the appellant had proven any violation of any single provision of the contract.

We find the same to be true here: the record fully documents Appellee's persistent rejection of and resistance to suggestions and advice offered for the improvement of his thesis. His inability to produce work in a form acceptable to the academic/technical community after eight years' association with that community, and despite obvious intellectual competence, bespeaks an unwillingness to conform to the requirements of academic production, e.g., the exposition of ideas in such a way as to demonstrate organizational coherence, intelligibility and accuracy in an established format, rather than of abilities so far beyond those of the community as to outpace them. The trial court ignored Appellee's responsibility in his undoing. Indeed, during trial the court observed,

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[14] Indeed, Dr. Kam testified that Appellee's work suffered from chronic problems such as lack of continuity; "issues of consistency of exposition and presentation;" lack of clarity; undefined terms and symbols; and results that were better than theoretically possible. (N.T. Trial, 4/22/99, at 83-85).

"it seems to me that everybody is like(sic) trying to put him in the box that you're used to, and maybe that's not where he was." (N.T., 4/27/99, at 75).

Entrance to the "box," which Appellee actively sought, and the means to achieve which he well understood, is through fulfillment of rigorous academic criteria, including the independent examination of novel ideas. As the Graduate Bulletin makes clear:

> All dissertations must be based on original research and must clearly demonstrate the candidate's ability to work at the frontiers of the field.

(Exhibit 1, Graduate Bulletin 1986-87, at 16-17). Whether the ideas are expressed in a manner consistent with entry to the academic "box" is of necessity an academic judgment, not one for the courts. Here, the trial court has rejected the "academic norms" to which ***Swartley*** and its antecedents have decreed deference, and has replaced them with Appellee's declarations of dissatisfaction. This is error.

The court also insinuates that the dismissal of Appellee was a collusive action performed by committee members "unable to impartially and objectively assess the plaintiff's work," (Findings of Fact and Conclusions of Law, at 9), presumably having been suborned by Dr. Kalata. There is simply no confirmation for this conclusion in the record. Rather, Drs. Kam and Eisenstein testified that Dr. Kalata was Appellee's biggest supporter among the faculty. **See** N.T. Trial, 4/22/99, at 98; N.T. Trial, 4/27/99, at 31. Moreover, evidence for the trial court's finding that Dr. Kam and Dr. Kalata had a "close relationship" is also not to be found in the record. ***See*** Findings of Fact and Conclusions of Law, at ¶1 14. Dr. Kam was Dr. Kalata's only successful Ph.D.

student at the time Appellee was dismissed from the program. However, Dr. Kam testified that despite great respect for Dr. Kalata, he does not consider him a personal friend, and did not have any reason to stay in his good graces during the time Appellee was enrolled at Drexel. (N.T. Trial 4/22/99, at 135, 147).

The court also errs in conflating Appellee's complaints concerning his dismissal with the alleged appropriation of his invention. They are both separate from each other and individually without merit. Although Appellee testified that Dr. Kalata's disclosure of the idea to K-Tron was made without his consent, Appellee admitted that he ultimately agreed to pursue the patent with K-Tron, albeit to preserve his relationship with Dr. Kalata. It is undisputed, however, that soon after K- Tron filed the patent application, Dr. Kalata assigned all of his interest in the patent to the company. Thus, as of May 1990, five years before Appellee was dismissed from the doctoral program, Dr. Kalata no longer had any interest in or involvement with the patent. Moreover, two years later, Appellee obtained sole rights to the patent when K-Tron discontinued prosecution.

Thus, we fail to see how Dr. Kalata's involvement with Appellee's patent, which ended in 1990, affected the Special Advisory Committee's decision to dismiss Appellee from the doctoral program in 1995. Appellee's dismissal was based on his failure to satisfy academic requirements, and the assertion of Dr. Kalata's self-dealing with regard to the patent is without evidentiary support in the record.[15]

We find, for the foregoing reasons, that the judgment in favor of Appellee was erroneously entered by the trial court, and accordingly reverse.[16]

Judgment reversed.

McEwen, P.J.E., files a dissenting statement.

Judgment Entered.

S/_____
Pronothary

JUN 28 2001
Date:_____

[15] The trial court's findings that Dr. Kam either refused or was unable to provide appropriate guidance, and that the University failed to address Appellee's complaints, are discussed *supra*.

[16] In view of our disposition of Appellants' first two issues, we need not address the third.

J. A41042/00

ROBERT MOREIN,	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
Appellee	:	
	:	
V.	:	
DREXEL UNIVERSITY,	:	
DR. CONSTANTINE	:	
PAPADAKIS,	:	
DR. ELI FROMM,	:	
DR. BRUCE EISENSTEIN,	:	
DR. PAUL KALATA,	:	
DR. MOSHE KAM,	:	
	:	No. 1117 EDA 2000
Appellant	:	

Appeal from the Order dated March 9, 2000
In the Court of Common Pleas of Philadelphia County
Civil No. 03418, January Term 1997

ROBERT MOREIN,	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
Appellee	:	
	:	
V.	:	
DREXEL UNIVERSITY,	:	
DR. CONSTANTINE	:	
PAPADAKIS,	:	
DR. ELI FROMM,	:	
DR. BRUCE EISENSTEIN,	:	
DR. PAUL KALATA,	:	
DR. MOSHE KAM,	:	
	:	No. 1258 EDA 2000
Appellant	:	

Appeal from the Order dated April 5, 2000
In the Court of Common Pleas of Philadelphia County
Civil No. 03418, January Term 1997

BEFORE: MCEWEN, P.J. TODD and MONTEMURO*, JJ.
FILED JUN 28 2001

DISSENTING STATEMENT BY McEWEN, P.J.

While the Memorandum of the majority reveals an astute analysis and a most perceptive expression of view, I am compelled, most respectfully, to dissent since I share the distress of the distinguished Judge Esther R. Sylvester, the eminent trial judge, over the treatment accorded appellee by the University and, as well, by the failure, in my view, of the University to afford appellee (1) a full hearing, (2) before a disinterested officer or panel.

The formal contract which the University submitted to appellee for acceptance, once he was admitted to the University, set forth quite precisely the steps of appeal available to him if he were to suffer a perceived grievance during the course of his study. The University urges that it processed his grievance through the several prescribed procedural stages of review of academic complaints, specifically, through the (1) Department Head, (2) Dean, (3) President/Provost, and (4) Ombudsman. I need not address that asserted compliance, however, because the University, in its rush to demonstrate that it fulfilled its duty under the contract, fails to address the quite essential threshold question of whether the procedures for expression and resolution of grievance as set forth in the form of contract prepared and presented by the University to appellee, attained even minimum standards of fairness.

The inclusion by the University of ***Section 8: Student Complaint Procedure*** in the contract between the University and appellee conferred upon appellee ***the right***, and imposed upon the University ***the duty***, to engage in a grievance procedure that would be both efficacious, insofar as it would afford finality, and fair, insofar as each party would have an opportunity to be heard by a disinterested party or panel.

The positions of the University, and, apparently, of academia, as set forth in the numerous ***amicus*** briefs which have been filed[1], all raise a chant that the tradition of academic freedom precludes application to the University of a duty to afford basic fairness in the expression of grievance by those within its realm. Such a claim overlooks the rather monumental ascendancy of the individual effected by the revolutions of 1776 and 1793, and by the American Labor Movement. Rather, academia, in somewhat caste-like fashion, would prefer to remain aloof and, invoking the special privileges conferred upon universities by monarchs several centuries ago, refuses to yield to the concept of right and the correlative of duty, but instead clings to the concept of privilege and the correlative of no-duty. ***See:*** W.N. Hohfeld's ***Fundamental Legal Conceptions As Applied in Judicial Reasoning***[2].

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[1] *Amicus curiae* briefs were filed by each of the following parties: American Council on Education, Association of Independent Colleges & Universities of PA, Bryn Mawr College, Bucknell University, Carnegie Mellon University, Pennsylvania State University, Temple University, University of Pennsylvania, University of Pittsburgh, and Villanova University.

No one will dispute that academic freedom, in concept and in practice, is so intrinsic to learning, and thereby to humanity, that it must be maintained, protected, and defended from all and any effort to direct the pursuit of study and path of scholarship. The bright banner of academic freedom may not, however, be wrested from the university scholar by the university administrator so as to permit unfair treatment of an individual deemed worthy of admission to study but subsequently determined unfit for accreditation.

Appellee was advised by the University, by letter of February 2, 1995, from the Electronic and Computer Engineering Department Head that: "You have been terminated as a student of Drexel University. This action results from a recommendation to me from your Ph.D. committee which also has recommended that you be given an 'F' in Research as a result of unsatisfactory progress." The department head then quite nicely concludes:

"I wish you well in the future."

Appellee was, understandably enough, aggrieved by the termination. However arguable the contention that the University had theretofore been patient with the pace and performance of appellee, and however ample the evidentiary basis for the conclusion that appellee consistently refused to accept the counsel of his advisors with regard to recommended courses and protocol,

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[2] Hohfeld, Wesley Newcomb, ***Fundamental Legal Conceptions As Applied in Judicial Reasoning,*** Edited by Walter Wheeler Cook, Reprinted Greenwood Press Publishing Group, Inc. (New Haven, 1964).

termination is so final, even fatal, a decision that the University should have afforded appellee the hearing he sought, an encounter denied him because, as the Vice Provost testified, there were "many other things that our office had to deal with."[3]

[3]Dr. Fromm's testimony in relevant part was as follows:

[APPELLEE'S COUNSEL]: ... From 1995 to the current date, have you ever arranged to meet with Mr. Morein in person

[DR. FROMM]: No.

[APPELLEE'S COUNSEL]: .... to discuss this situation?

[DR. FROMM]: No.

[APPELLEE'S COUNSEL]: Is there a reason why not?

[DR. FROMM]: It was my responsibility to look into whether the process was dealt with properly, not the matters of whether his candidacy exam or the technical aspects of his work were appropriate. That's not my expertise and I could not make a judgment of that.
So I felt that the important thing was for me to investigate the matter, which I did, as I wrote to Dr. - Mr. Morein that I would, and it was my judgment call, **based on the many other things that our office had to deal with, that there was really nothing to be gained with a face-to-face meeting with Mr. Morein.**
...

N.T. April 19, 1999, pp. 56 –57.

At another point the following exchange occurred:

> [APPELLEE'S COUNSEL]: **In fact, Mr. Morein just wanted a fair hearing on certain inequities he felt had been done to him** in the entire thesis process; isn't that correct?
>
> [DR. FROMM]: That was his complaint.
>
> [APPELLEE'S COUNSEL]: Right. And you didn't give him a fair hearing; isn't that correct?
>
> [APPELLANTS' COUNSEL]: Will you let the witness answer the question, please?

Thus it is that I dissent.[4]

(STAMP)
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> [DR. FROMM]: No, that's not correct.
>
> [APPELLEE'S COUNSEL]: Okay. Did you give him ...
>
> [DR. FROMM]: A **hearing does not mean one has to talk face to fact.** I examined the circumstance. I examined the issues.

Id. at pp. 72 –73. (emphasis supplied)

[4]It is to be emphasized that Drexel University is a pillar Pennsylvania institution and has served the Atlantic Region in exceptional fashion, by making higher education available to generations of individuals who might not otherwise have been able to undertake further study. In fact, the legendary work-study programs initiated decades ago by Drexel University continue to serve as the model for such programs throughout the country. One can image that Benjamin Franklin would, perhaps, find as much to admire in the operations of Drexel as in the neighboring University which he founded.

Thus, some might say that the prolonged patience Drexel afforded appellee prior to the termination more clearly reflects the image of Drexel University than does the method of termination, and that, as the *amicus* briefs indicate, severance without meaningful recourse is rather a syndrome of academia.

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

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PURSUANT TO Pa.R.C.P. 236(b)

MAR 09 2000
First Judicial District of Pa.
User I.D.: S/

ROBERT MOREIN	:	JANUARY TERM, 1997
	:	
v.	:	
	:	
DREXEL UNIVERSITY, et al.	:	NO. 03418

OPINION IN RESPONSE TO DEFENDANTS' MOTION FOR RECONSIDERATION

This Court has been asked by the defendants to Reconsider its Findings of Fact, Conclusions of Law, and Discussion of Law dated February 1, 2000, where it found the defendants liable to the plaintiff as a result of defendant's treatment of the plaintiff while he was enrolled in a doctoral program at defendant Drexel University. In its Motion for Reconsideration the defendants raise several issues which they contend support their assertion that this Court erred in finding in favor of the plaintiff. Having carefully reviewed the defendants' Motion it is this Court's conclusion that all but two of the claims raised by the defendants have been adequately addressed by this Court's Findings of Fact, Conclusions of Law, and Discussion.

These two claims involve the Court's awarding of attorneys' fees to the plaintiff and its ruling that Dr. Thomas Punnett and Dr. Michael Sidman could testify as expert witnesses for the plaintiff.

With respect to the defendants' claim that this Court erred in awarding plaintiff attorneys' fees, a review of the law indicates that the defendants' position is correct. As noted by the defendants in their brief accompanying their post-verdict motions, attorneys' fees may only be awarded when an agreement between the parties allows such fees to be assessed, when there is a specific statutory provision permitting the awarding of such fees, or when thereexists some other established exception permitting the grant of attorneys' fees in a given situation. See Merlino v. Delaware County, 556 Pa. 422, 728 A.2d 949 (1999); Egelman v. Egelman, 728 Pa.Super. 360 (Pa.Super. 1999); 42 Pa. C.S.A. § 2503.

Instantly, since none of the three grounds set forth above apply here, this Court amends its Order of February 1, 2000, directing the defendants to reimburse the plaintiff for his attorneys' fees. Accordingly, defendants' claim with respect to this issue is granted.

Defendants' second issue, however, is meritless as Dr. Michael Sidman and Dr. Thomas Punnet, plaintiff's expert witnesses, possessed knowledge outside that of a mere lay witness which knowledge was directly relevant to the instant matter. In Flanagan v. Labe, 547 Pa. 254, 690 A.2d 183 (1997), the Supreme Court had the occasion to address a claim similar to the one presented here. The Court wrote:

> The decision to permit a witness to testify as an expert rests with the sound discretion of the trial court, and, absent an abuse of that discretion, the decision will not be disturbed on appeal. Miller v.

> Brass Rail Tavern, Inc., 541 Pa. 474, 481, 664 A2.d 525, 528 (1995). To be qualified to testify in a given field, a witness normally needs only to possess more expertise than is within the ordinary range of training, knowledge, intelligence, or experience. Id. At 481, 664 A.2d at 528. Ordinarily, therefore, the test to be applied is whether the witness has a reasonable pretension to specialized knowledge on the subject matter in question. Id. at 480-81, 664 A.2d at 528; Ruzzi v. Butler Petroleum Co., 527 Pa. 1, 10, 588 A.2d 1, 5 (1991).

Flanagan, 690 A.2d at 185.

In Miller v. Brass Rail Tavern, Inc., 541 Pa. 474, 481, 664 A.2d 525, 528 (1995) the Court provided:

> "It is well established in this Commonwealth that the standard for qualification of an expert witness is a liberal one. The test to be applied when qualifying an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine."

Miller, 664 A.2d at 528. (Emphasis in original) (Citations omitted.) See also comment to Rule 702, Pa. R. Ev.

An application of the foregoing to the instant matter indicates that this Court did not abuse the discretion afforded it under the law. Doctors Sidman and Punnett, plaintiff s expert witnesses, surely possessed specialized knowledge relevant to the matter then being tried. Simply because these witnesses may not have had specific knowledge about certain programs at Drexel University did

not render them incompetent to testify as expert witnesses since it is clear that both witnesses are highly educated men whose backgrounds and experiences rendered them capable of voicing the opinions they did at trial. Importantly, the fact these men were deemed qualified to render opinions did not imbue the testimony they gave with an air of gospel truth. This Court, as factfinder, was free to ignore the opinions of these two men even though they were found to be sufficiently qualified to be deemed expert witnesses.

Accordingly, for all of the foregoing reasons, defendants' claim with respect to this issue is denied.

Before concluding, it is noted that on February 28, 2000, plaintiff filed a response to the defendant's Motion for Reconsideration. In that response, in addition to responding to the claims raised by the defendants, plaintiff asks this Court to amend its Order of February 1, 2000 and grant him certain other relief including the award of punitive damages, reimbursement for registration fees, tuition, and related charges paid by him, and the attachment of this Court's Findings of Fact and Conclusions of Law to his official transcript. Plaintiff, however, by failing to file post-verdict motions within ten days of February 1, 2000, the date this Court issued its decision in this matter, has waived the right to request post-verdict relief. See Pa.R.Crim. P. 227.1, 42 Pa. C.S.A. Despite this, it is noted that if the plaintiff decides to remain at Drexel and pursue a doctoral degree, implicit in this Court's decision of February 1,2000, is the understanding that Drexel University will act in good faith. This would require it to expunge from the plaintiff's transcript any failing grade and to permit the plaintiff to retake any course in which he received a failing grade without having to pay tuition again for any such courses insofar as the plaintiff already paid tuition for these courses and did not

receive in return what Drexel University promised him in its Guidebook.

In addition, if plaintiff decides not to seek reinstatement at Drexel, the defendants are obliged to reimburse him for any and all fees, tuition, and other costs actually paid to Drexel University while enrolled in its doctoral program. Of course, since this Court found that the plaintiff was wrongly discharged from the program, if the plaintiff chooses this latter remedy, defendant Drexel University shall expunge from his transcripts the failing grades plaintiff received while under the tutelage of Dr. Kalata. Plaintiff is to submit an appropriate Order to this Court by April 1, 2000, setting forth the form of relief, as outlined by this Court, he desires on account of the defendants' conduct.

In conclusion, defendants' motion for reconsideration of this Court's Order awarding plaintiff attorneys' fees is granted insofar as the law did not permit the awarding of such fees. Defendants' motion is denied in all other respects. Plaintiff s written request for post-verdict relief is deemed waived due to plaintiff s failure to timely file for such relief.

BY THE COURT;

S/Esther R. Sylvester
HONORABLE ESTHER R. SYLVESTER

DATED: March 9, 2000

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT
OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ROBERT MOREIN	:	**JANUARY TERM, 1997**
v.	:	
DREXEL UNIVERSITY,	:	
et. al.	:	**NO. 03418**

ORDER

AND NOW, this 9th day of March, 2000, it is hereby ORDERED and DECREED that 3efendants' Motion for Reconsideration of this Court's Order of February 1, 2000, awarding plaintiff counsel fees is granted. Defendants' Motion for Reconsideration is denied in all other respects. It is further ORDERED that by April 1, 2000, plaintiff is to submit an appropriate ORDER to this Court outlining the form of relief he desires on account of the defendants' conduct. Plaintiff is denied post-verdict relief for the reasons stated in the attached Opinion.

BY THE COURT,
S/Esther R. Sylvester
HONORABLE ESTHER R. SYLVESTER

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MAR 9-2000
L. RYANT

IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT
OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ROBERT MOREIN	:	**JANUARY TERM,**
1997	:	
v.	:	
DREXEL UNIVERSITY,	:	
et. al.	:	**NO. 03418**

ORDER

AND NOW, this 18th day of April, 2000, upon consideration of the defendants' PostTrial Motion and Application for Stay, it is hereby ORDERED and DECREED that the Motion is DENIED and that the request for a Stay is denied. Judgment is entered accordingly.

BY THE COURT,
S/Esther R. Sylvester
HONORABLE ESTHER R. SYLVESTER

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APR 18 2000
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IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT
OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ROBERT MOREIN	:	**JANUARY TERM,**
1997	:	
v.	:	
DREXEL UNIVERSITY,	:	
et. al.	:	**NO. 03418**

ORDER

AND NOW, this 3rd day of April, 2000, it is hereby ORDERED and DECREED that defendants reimburse plaintiff in the amount of $44,914.00 for all costs associated with his enrollment in defendants' doctoral program plus the legal rate of interest from the date of verdict, February 1, 2000, and further, that defendants expunge from plaintiff s transcripts the administrative "F's" appearing thereon.

BY THE COURT,
S/Esther R. Sylvester
HONORABLE ESTHER R. SYLVESTER

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APR 03 2000
First Judicial District of Pa.
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IN THE COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT
OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ROBERT MOREIN	:	JANUARY TERM 1997
	:	
v.	:	
DREXEL UNIVERSITY, et al.	:	NO. 03418

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PURSUANT TO Pa.R.C.P.236(b)
FEB 01 2000
First Judicial District of Pa.
User I.D.: S/_____

FINDINGS OF FACT

This matter was tried from April 27, 1999 to April 29, 1999 on an action filed by the plaintiff claiming that he was wrongfully discharged from a doctoral program at defendant Drexel University.

Having carefully reviewed the record in this matter as well as the various filings of the parties and the applicable law, the Court makes the following findings of fact and conclusions of law:

1. Plaintiff, Robert Morein, is an adult resident of the Commonwealth of Pennsylvania.

2. Defendant Drexel University is an academic institution situated at 32nd and Chestnut Streets, Philadelphia, Pennsylvania.

3. Defendants Constantine Papadakis, Dr. Eli Fromm, Dr. Bruce Eisenstein, Dr. Paul Kalata, and Dr. Moshe Kam all are adult individuals who are employed by defendant Drexel University.

4. Plaintiff, having received a Bachelor of Science Degree in 1974 from Lehigh University and a Masters Degree from Temple University in 1981, applied for and was accepted by defendant Drexel University in 1989 as a doctoral candidate in the field of Electrical and Computer Engineering.

5. Prior to being accepted into the doctoral program, the plaintiff was required to take several courses in the Post-Masters Program in which courses he obtained a 3.8 grade point average.

6. Plaintiff was also required to take a written and oral examinations which he passed prior to his acceptance in the doctoral program.

7. Upon being admitted into the doctoral program, plaintiff was assigned defendant Dr. Paul Kalata as his thesis supervisor and advisor.

8. Dr. Kalata had not published any articles in his field for several years and had a poor record as a thesis supervisor.

9. From the date of his admission in the doctoral program until his dismissal, the plaintiff was not provided

with meaningful or constructive guidance with respect to his field of study which concerned noise reduction in certain types of sensors.

10. While acting as plaintiff's thesis supervisor Defendant Kalata had a financial relationship with a private corporation, namely K-Tron Corporation.

11. Defendant Kalata did not immediately disclose this relationship to the plaintiff even though defendant Kalata took plaintiffs work to the company with which he was financially involved and received favorable reviews of it.

12. A dispute arose between the plaintiff and defendant Kalata over Dr. Kalata's bringing of plaintiff's work to the company with which he was associated and with respect to possible compensation for the plaintiff.

13. On account of the poor relationship that plaintiff and defendant Kalata had, plaintiff appealed to the chairman of defendant Kalata's program, namely, defendant Dr. Moshe Kam, for the appointment of another thesis supervisor.

14. Dr. Kam was Dr. Kalata's only successful doctoral candidate and had a close relationship with him.

15. Despite the plaintiffs request, Dr. Kalata was not relieved as plaintiffs thesis supervisor.

16. Rather, a committee composed of four professors including Drs. Kalata and Kam was formed to oversee the plaintiffs work in August of 1991 at the suggestion of Dr. Kalata.

17. Plaintiff met infrequently with the members of the committee.

18. The committee did not provide him with guidance or any suggestions as to how he could prepare his thesis.

19. Approximately every six months approximately after the committee was formed, plaintiff's work was reviewed. However, the individuals reviewing the work were not capable of understanding plaintiff's theories which were highly advanced and proposed a novel approach to the problem upon which he was working.

20. From the time of his admission into the doctoral program in 1990 until June of 1994, plaintiff did not receive any guidance as to how he should proceed with respect to the preparation of his doctoral thesis.

21. Such assistance was first provided in June of 1994 by Professor Tretiak who was a member of the committee assigned to supervise the plaintiff.

22. In January of 1995, plaintiff made a presentation to the committee. It was deemed insufficient.

23. Plaintiff was thereafter dismissed from the doctoral program by a unanimous vote of the appointed committee because he had not completed the program in five years as required by a Drexel University regulation embodied in the Graduate Student Handbook.

CONCLUSIONS OF LAW

1. Trial Courts are usually reluctant to interfere in disputes between students and post-secondary institutions of learning.

2. Despite this, a student may bring a cause of action for breach of contract where the defendant college or university has breached written policies, guidelines, or procedures or has acted in an arbitrary or capricious manner.

DISCUSSION OF LAW

This case involves a lawsuit brought by a doctoral candidate against Drexel University and certain professors assigned to counsel and guide him in his endeavor to be granted a doctoral degree. Having carefully reviewed the matter this Court has concluded that plaintiff is entitled to relief insofar as it is clear to this Court that the defendants did not fulfill their contractual responsibility to educate the appellant as the defendants violated certain written provisions of the agreement between themselves and the plaintiff and acted in an arbitrary and capricious manner with respect to the plaintiff.

This Court recognizes that as a general rule, the legal system is reluctant to intervene in disputes between an academic institution and its students. See Regents of University of Michigan v. Ewing, 474 U.S. 214, *1065* Ct. 507,88 L.Ed.2d 523 (1985); Boehm v. U. of PA. School of Vet.

Med., Pa.Super., 573 A.2d 575 (1990). In spite of this, the Courts of this Commonwealth have established that suits may be brought by students against an academic institution for breach of contract. Cavaliere v. Duff's Business Institute, 392 Pa.Super. 502, 573 A.2d 575 (1990). In Swartley v. Hoffner, 734 A.2d 915 (Pa.Super. 1999), allocatur denied, Pa. __, __ A.2d __ (12/9/99):

> Based upon the prior statements of our Court, as well as the numerous learned decisions of other courts, we now hold that the relationship between a private educational institution and an enrolled student is contractual in nature; therefore, a student can bring a cause of action against said institution for breach of contract where the institution ignores or violates portions of the written contract.

Swartley, 734 A.2d at 919 (citations omitted.)

The Swartley court further indicated that "the contract between a private institution and a student is comprised of written guidelines, policies and procedures as contained in the written material distributed to the student over the course of their enrollment in the institution." Swartley, 734 A.2d at 919 (citations omitted.)

Instantly, a review of the record establishes beyond cavil that not only were there written guidelines policies and procedures that defined the parties' relationship but also that the defendants breached the standards of care and duties prescribed by these documents. For example, an excerpt from defendant Drexel's Graduate Bulletin 1986-87 states that, "The Graduate School consists of faculty members who teach and direct the scholarly activities of selected post-baccalaureate students who are pursuing advanced study." In addition, it provides that, "The personal relationship between professor and student, which arises

from the dissertation is recognized as teaching/learning of the highest order."

Instantly, the defendants unequivocally failed to meet these standards. Not only did defendant Dr. Kalata fail to provide the plaintiff the promised direction with respect to plaintiff's field of study, he failed to establish the personal relationship with the plaintiff promised by the Graduate Bulletin. In fact, instead of establishing a personal relationship with the plaintiff, Dr. Kalata, unbeknown to the plaintiff gave the plaintiffs academic product to a company with which he had a financial relationship for his own gain. Moreover, despite plaintiff's myriad pleas for assistance Dr. Kalata ignored them and even attempted to undermine the plaintiff's progress by influencing the members of the committee formed after the plaintiff lodged his complaints against Dr. Kalata.

The fact that in response to the plaintiffs complaints about Dr. Kalata, a committee was formed (Plaintiffs Exhibit 22) rather than the appointment of a new thesis supervisor also violated the written policies of the defendant Drexel University for nowhere in the previously mentioned Bulletin does it permit, allow, or even mention that such a committee might be convened. The reason, the Court suggests, that the Graduate Bulletin fails to mention such a committee is that such a committee cannot provide the personal relationship between the faculty advisor and the student promised by the Graduate Bulletin. Tellingly, even if the formation of such a committee was contemplated by the Graduate Bulletin, in this case the committee was not established in good faith insofar as Dr. Kalata was named to the committee as was Dr. Kam who was a close associate of Dr. Kalata and who paid deferrence to Dr. Kalata's judgment and decisions.

That Dr. Kalata failed to provide the plaintiff with the promised guidance is evidenced by a memo Dr. Kalata sent to the plaintiff (Plaintiffs Exhibit 28). In that memo Dr.

Kalata clearly indicated the degree to which he had abdicated his responsibilities toward the plaintiff. His ambivalence with respect to the plaintiffs future course of research is manifestly obvious and quite frankly, distressing to this Court. Having dutifully paid his tuition plaintiff was entitled to expect that the University through its professors would make certain that the courses he took and the research he engaged in would bring him nearer to his goal, namely the receipt of a doctoral degree.

Not only did Dr. Kalata fail to provide the plaintiff with the direction and guidance promised him but so did the committee. Despite plaintiff's repeated requests for assistance (See Plaintiffs Exhibits 48, 49, and 53) none was provided him leaving him unable to complete the required course work in a timely fashion. The failure to respond to plaintiff's letters in a meaningful way was violative of the promises expressed in the Graduate Bulletin.

Finally, Drexel University breached its duty to conduct a full and impartial investigation after the plaintiff lodged his complaints with respect to Dr. Kalata (See Plaintiff's Exhibit 94). At a minimum, the University was obliged to follow the procedures set forth in the exhibit cited and its failure to do so amounted to a breach of the contract expressed in the Graduate Bulletin.

Plaintiff is also entitled to relief because the defendants acted in bad faith and exhibited ill will toward the plaintiff when it discharged him. In the Swartley decision, in addition to establishing a cause of action for breach of contract based on a violation of written "guidelines, policies, and procedures," the Court indicated that relief will be forthcoming when an academic decision "'was motivated by bad faith or ill will unrelated to academic performance.'" Swartley, 734 A.2d at , quoting, Stoller v. College of Medicine, The Milton S. Hershey Medical Center, 562 F. Supp. 403, 412 (M.D. Pa. 1983).

Instantly, it is this Court's opinion that the defendants were motivated by bad faith and ill will when they expelled the plaintiff. This conclusion is based on the fact that Dr. Kalata and some of the members of the committee formed to replace Dr. Kalata lacked the training necessary to understand the nature of the research plaintiff was pursuing. In addition, Dr. Kam either refused or was unable to provide the plaintiff with the guidance he needed in his research; and, although the plaintiff made several complaints about Drs. Kalata and Kam, the University failed to address those complaints in an adequate fashion. Rather than appoint the plaintiff another thesis supervisor, Dr. Kalata was replaced by a committee that not only included him but also Dr. Kam a close associate of Dr. Kalata's, someone who the record shows acceded to Dr. Kalata's demands and wishes.

Perhaps the evidence that best shows that Dr. Kalata's motives were less than pure vis a vis the plaintiff is that establishing Dr. Kalata's financial relationship with K-Tron Corporation. Instead of focusing on the plaintiff and seeing that he make progress toward achieving his doctorate degree, Dr. Kalata appropriated the plaintiffs work and shared it with K-Tron ostensibly for both his and K-Tron's financial gain.

On account of his relationship with K-Tron Corp., Dr. Kalata should have refused to serve on the committee once it was decided to form one in response to the plaintiff's complaints about him. Not only did Dr. Kalata fail to refrain from serving on the committee he then proceeded to influence the other members of the committee especially Dr. Kam, a close associate of his, such that the committee was unable to impartially and objectively assess the plaintiff's work product and provide him with the guidance promised by the Graduate Bulletin. For these reasons, it is clear that the defendants did not perform as required and that the plaintiff is entitled to damages as a consequence of the

defendant's breach of the agreement between them and the plaintiff.

Having found both that the defendants breached the written contract between themselves and the plaintiff, and, that the defendants have acted in bad faith and exhibited ill will with respect to the plaintiff, the question of what remedy plaintiff is entitled to must be addressed. Given that this Court has found that the defendants are in breach of the contract between themselves and the plaintiff, it is clear that he is entitled to the amounts he paid in tuition while working on his doctorate as well as counsel fees. In addition, since the Court has found that the defendants arbitrarily dismissed the plaintiff from the doctoral program, it is this Court's view that he is entitled to reinstatement as well as the expungement from his record the fact of his dismissal as well as attorney's fees. Plaintiff, however, is not entitled to both remedies as it would be unfair to the defendants to require them to reimburse the tuition money plaintiff tendered to Drexel University and require it to reinstate him. Consequently, plaintiff must elect between these two remedies and advise this Court and the defendants of his election so that this Court can issue an appropriate Order.

BY THE COURT:

S/Esther R. Sylvester

HONORABLE ESTHER R. SYLVESTER

HANDWRITTEN DATE:
Feb 1, 2000
DATE

APPLICATION FOR UNITED STATES PATENT

Declaration and Power of Attorney

As a below named inventor, I hereby declare that: my residence, post office address and citizenship are as stated below next to my name: that

1

I verily believe I am the original, first and sole inventor (if only one name is listed below I or an original first and joint inventor (if plural names are listed below)) of the subject matter which is claimed and for which a patent is sought on the invention entitled: FILTERLESS METHOD AND APPARATUS FOR NOISE IDENTIFICATION IN STOCHASTIC CONTROL SYSTEMS described and claimed in the specification:

Check one
a [ ] attached hereto.
b [X] filed on 3/21/90 as Application Serial No. 07/496,926 and amended on _____.
(if applicable)

I hereby state that I have reviewed and understand the contents of the above-identified specification. including the claims, ***as amended by any amendment referred to above.***

I acknowledge the duty to disclose information of which I am aware which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations. § 1.56(a). Under Title 35, U.S. Code § 119. the priority benefits of the following foreign application(s) filed within one year prior to this application are hereby claimed:

None

The following applications for patent or inventor's certificate on this invention were filed in countries foreign to the United States of America either (a) more than one year prior to this application, or (b) before the filing date of the above-named foreign priority application(s):

2 *If there are no corresponding applications, insert "NONE".* None

I hereby appoint the following as my attorneys of record with full power of substitution and revocation to prosecute this application and to transact all business to the Patent Office:

James A. Oliff. Reg. No. 27.075;
William P. Berridge, Reg. No. 30.024

ALL CORRESPONDENCE IN CONNECTION WITH THIS APPLICATION SHOULD BE SENT TO OLIFF & BERRIDGE, P.O. BOX 19928, ALEXANDRIA, VIRGINIA 22320, TELEPHONE (703) 836-6400

I hereby declare that I have reviewed and understand the contents of this Declaration. and that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true: and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment. or both. under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

3 Typewritten Full Name of Sole or First Inventor Robert T. MOREIN

4 Inventor's Signature _____

5 Date of Signature _____

6 Residence Dresher, Pennsylvania U.S.A.

7 Citizenship U.S.A.

8 Post Office Address 1570 Arran Way
Dresher, Pennsylvania 19025 U.S.A.

*This form may be executed only when attached to the specification (including claims) at the end thereof if Box a is checked.

**Note to Inventor: Please sign name on line 4 exactly as it appears in line 3 and insert the actual date of signing on line 5.

IF THERE IS MORE THAN ONE INVENTOR USE PAGAE 2 AND PLACE AN "X" HERE X

PAGE 2 OF U.S.A. DECLARATION FORM
(Discard this page in a sole inventor application)

3 Typewritten Full Name of Paul R. Kalata
*4 Inventor's Signature S/Paul R. Kalata
*5 Date of Signature S/ May 3 1990
*6 Residence Cherry Hill New Jersey U.S.A.
3 Typewritten Full Name of _____
Third Joint Inventor (if any)
*4 Inventor's Signature _____
*5 Date of Signature _____
*6 Residence _____
*7 Citizenship _____
8 Post Office Address _____
(insert complete mailing _____
address, including country)
3 Typewritten Full Name of _____
Fourth Joint Inventor (if any)
*4 Inventor's Signature _____
*5 Date of Signature _____
*6 Residence _____
*7 Citizenship _____
8 Post Office Address _____
(insert complete mailing _____
address, including country)

(continuation of the Page 2 U.S.A. Declaration Form)

3 Typewritten Full Name of_____
Fifth Joint Inventor (if any)
*4 Inventor's Signature_____
*5 Date of Signature_____
*6 Residence_____
*7 Citizenship_____
8 Post Office Address _____
(insert complete mailing_____
address, including country)

*Note to Inventors: Please sign name on line 4 exactly as it appears in line 3 and insert the actual date of signing on line 5.
This form may be executed only when attached to the first page of the Declaration and Power of Attorney form and the specification (including claims) of the application to which it pertains.

K-Tron International Inc.
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Phone (609) 589-0500
Direct Dial (609) 256-3311
FAX (608) 582-7968

(K-Tron Logo)

Robert L Weinberg
Senior Executive Vice Precedent and
Chef Financial Officer

July 7, 1997

Dr. Paul Kalata
229 Sawmill Road
Cherry Hill, NJ 08034

RE: Consulting Agreement
Dear Dr. Kalata:

Bob Weinberg asked that I send the attached copy of a consulting agreement you had signed with K-Tron. Please forgive the poor quality of the copy. It was faxed from our attorney.

Thank you.

Sincerely,
S/Jane M. Tubbs
Jane Tubbs Executive Assistant
Enclosure

CONSULTING AGREEMENT

THIS CONSULTING AGREEMENT is made this 12th day of March, 1986, effective as of December 20, 1985, between K-TRON INTERNATIONAL, INC., a New Jersey corporation ("K-Tron"), and DR. PAUL R. KALATA, an individual residing in New Jersey ("Consultant").

RECITALS:

1. K-Tron desires to retain Consultant effective as of December 20, 1985 to assist K-Tron and its subsidiaries (the "K-Tron Group") in the development and use of the K-Tron Group's products, on the terms and conditions set forth herein, and Consultant desires to act as a consultant to K-Tron on such terms and conditions.

2. K-Tron and Consultant desire to confirm, in writing, the terms and conditions of the consultancy.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Engagement as Consultant; Independent Contractor. K-Tron retains Consultant to consult with and advise the K-Tron Group, and Consultant accepts such engagement and agrees to provide consulting services to the K-Tron Group, in accordance with the terms and conditions set forth herein. Consultant shall at all times act hereunder as an independent contractor, and nothing herein shall be deemed to create or imply an agency or employment relationship between K-Tron and Consultant.

2. Term. The term for which Consultant shall consult with the K-Tron Group (the "Consulting Term") shall commerce as of December 20, 1985 and shall continue until terminated in accordance with Section 10 hereof.

3. Duties and Responsibilities. During the Consulting Term, Consultant shall consult with and advise the K-Tron Group and assist the K-Tron Group in the discovery, development and exploitation of new products and in the improvement and exploitation of existing products.

4. Extent of Service. Consultant shall devote such time, attention and energy as is necessary to fulfill his duties and responsibilities hereunder.

5. Compensation. K-Tron shall compensate Consultant at the race of $400 per day for his services rendered hereunder, payable in the ordinary course of K-Tron's business upon receipt from Consultant of appropriate bills.

6. Expenses. Consultant shall be reimbursed for the reasonable expenses incurred by him in connection with his performance of services hereunder upon presentation to K-Tron of an itemized account and written proof of such expenses.

7. Developments. Consultant shall disclose fully, promptly and in writing to K-Tron any and all inventions, discoveries, improvements, modifications and the like, whether patentable or not, which he has conceived, made or developed, solely or jointly with others, while a consultant to the K-Tron Group and which (i) relate to the business, work or activities of any company within the K-Tron Group, or (ii) result from or are suggested by the carrying out of his duties hereunder, or from or by any information which he may receive while a consultant to the K-Tron Group.

Consultant hereby assigns, transfers and conveys to K-Tron all of his right, title and interest in and to any and all such inventions, discoveries, improvements, modifications and the like and agrees to take all such actions as may be requested by K-Tron at any time and with respect to any such invention, discovery, improvement, modification, or the like to confirm, or evidence such assignment. Furthermore, at any time and from time to time, upon the request of K-Tron, Consultant shall execute and deliver to K-Tron any and all instruments, documents and papers, given evidence and do any and all other acts which, in the opinion of counsel for K-Tron, are or may be necessary or desirable to document such transfer or to enable K-Tron to file and prosecute applications for and to acquire, maintain and enforce any and all patents, trademark registrations or copyrights under United States or foreign law with respect to any such inventions, discoveries, improvements, modifications or the like or to obtain any extension, validation, reissue, continuance or renewal of any such patent, trademark or copyright. K-Tron shall be responsible for the preparation of any such instruments, documents and papers and for the prosecution of any such proceedings and shall reimburse Consultant for all reasonable expenses incurred by him in compliance with the provisions of this Section.

8. Confidential Information. Consultant acknowledges that companies within the K-Tron Group own and will continue to acquire and use commercially valuable technical and non-technical information which is held secret and confidential by them and is vital to the success of their businesses (said information being referred to hereinafter as "proprietary information of K-Tron") and that he, as a consultant to the K-Tron

Group, may become acquainted with said proprietary information of K-Tron and may contribute thereto, either through inventions, discoveries, improvements, modifications or otherwise. Consultant shall maintain, in confidence and protect all said proprietary information of K-Tron, and, except as required by the discharge of his duties as a consultant to the K-Tron Group, shall not use, publish, or otherwise disclose or disseminate at any time any of said proprietary information of K-Tron, whether or not developed or contributed to by him, unless such use, publication, disclosure or dissemination is made with the prior written consent of K-Tron.

9. Equitable Relief. Consultant acknowledges that the restrictions contained in Sections 7 and 8 hereof are, in view of the nature of the business of the K-Tron Group, reasonable and necessary to protect the legitimate interests of the K-Tron Group, and that any violation of any provision of those Sections will result in irreparable injury to K-Tron. Consultant also acknowledges that in the event of any such violation K-Tron shall be entitled to preliminary and permanent injunctive relief, without the necessity of proving actual damages, and to an equitable accounting of all earnings, profits and other benefits arising from any such violation, which rights shall be cumulative and in addition to any other rights or remedies to which K-Tron or any company within the K-Tron Group may be entitled. Consultant agrees that in the event of any such violation, an action may be commenced for any such preliminary and permanent injuntive relief and other equitable relief in any federal or state court of competent jurisdiction sitting in Gloucester or Camden County, New Jersey or in any other court of competent jurisdiction. Consultant hereby waives, to the fullest

extent permitted by law, any objection that he may now or hereafter have to such jurisdiction or to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that such suit, action or proceeding has been brought in an inconvenient forum. Consultant agrees that effective service of process may be made upon him by mail under the notice provisions contained in Section 14 hereof.

10. Termination. The Consulting Term hereunder may be terminated at any time by either party hereto and shall terminate upon the first to occur of (i) the sending of a written termination notice by either party pursuant to Section 14 hereof, or (ii) the death or incapacity of Consultant. Upon any such termination K-Tron shall have no further liability or obligation to Consultant, his successors or personal representatives, except for the payment of compensation at the rate specified in Section 5 hereof for services rendered but not compensated before such termination and for the reimbursement of expenses in accordance with Section 6 hereof for expenses incurred but not reimbursed before such termination. Notwithstanding the termination of the Consulting Term, the obligations of Consultant under Sections 7 and 8 hereof shall survive and remain in full force and effect and K-Tron shall be entitled to equitable and other relief against Consultant pursuant to Section 9 hereof in the event of his violation of any provision of those Sections.

11. Contents of Agreement; Assignment. This Consulting Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof. All of the rights and obligations of K-Tron or any other company within the K-Tron Group under this Consulting Agreement shall be enforceable by K-Tron and be binding upon and inure to the benefit of and be

enforceable by K-Tron's successors and assigns. Because the duties and responsibilities of Consultant hereunder are of a personal nature, this Consulting Agreement shall neither be assigned nor otherwise delegated or transferred by Consultant in whole or in part and any such purported assignment, delegation or transfer shall be invalid. This Consulting Agreement may not be amended or otherwise modified except by written instrument duly executed by K-Tron and Consultant.

12. Severability. If any term of this Consulting Agreement is held to be invalid or unenforceable for any reason, such term shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining terms hereof, and this Consulting Agreement shall be construed as if such invalid or unenforceable term had not been contained herein.

13. Governing Law. This Consulting Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey applicable to agreements made and to be performed within New Jersey.

14. Notices. All consents, waivers and other communications that are required or permitted hereunder shall be sufficient if given in writing and delivered personally or by registered or certified mail, return receipt requested, postage prepaid to K-Tron and Consultant at their respective addresses set forth below:

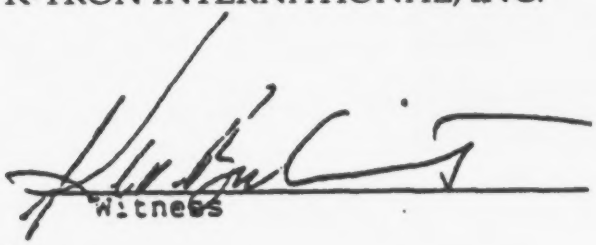
If to K-Tron:
K-Tron International, Inc. Routes 55 and 553
Pitman, NJ 08071
Attn: Chief Executive Officer

If to Consultant:
Dr. Paul R. Kalata
229 Sawmill Road Cherry Hill, NJ 08034

All such notices shall be deemed to have been given on the date delivered or mailed in the manner provided above.

IN WITNESS WHEREOF, this Consulting Agreement has been executed by the parties hereto.

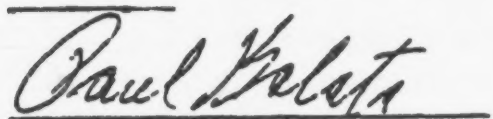
K-TRON INTERNATIONAL, INC.



By:

As its Chairman and Chief Executive Officer

(signature of C.E.O. of K-Tron, Inc.)



Dr. Paul R. Kalata

(SEAL)

Signature of Paul R. Kalata

Kenneth Bulivant
K-Tron International, Inc.
Routes 55 & 553
Pitman, NJ 08071

December 31,1985
229 Sawmill Road
Cherry Hill, NJ 08034

Dear Mr. Bullivant,

This invoice is for five days of consultant services on the Rate of Weight Loss Feeding System for the time period 12-20-85 to 12-31-85. For my rate of $400 per day the total compensation is $2,000. Please forward the payment to:

Paul Kalata
229 Sawmill Road
Cherry Hill, NJ 08034

Note: SS# 319-36-5544

Sincerely
S/Paul Kalata

Handwritten:
OK. KuB 12/31/85

☐VOID ☐CORRECTED

PAYER'S name, street address, city, state, and ZIP code K-TRON INTERNATIONAL RT 55 & 553 PITMAN NJ 08071		1 Rent $	OMB No. 154-011575 1988 Miscellaneous Income Statement for Recipients of	
		2 Royalties $		
PAYER'S Federal Identification Number 22-1759452	*RECIPIENT'S* identification number 319-36-5544	3 Prizes and awards $	4 Federal income tax withheld $	Copy C for Payer or State Copy For Paperwork Reduction Act Notice and instructions for completing this form, see instructions for Forms 1099, 1098, 5498, 1096, and W-2G
RECIPIENT'S name, address, and ZIP code DR. PAUL KALATA 229 SAWMILL ROAD CHERRY HILL NJ 08034		5 Fishing boat proceeds $	6 Medical and health care payments $	
		7 Non employee compensation $28,300.00	8 Substitute payments in lieu of dividends and interest $	
		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale. ☐		
Account number (optional)		10 (below text typed by preparer) Consultant Fees . . . . . ☐		

☐VOID ☐CORRECTED

OMB No. 15450115

1989 Miscellaneous Income

Statement for Recipients of

PAYER'S name, street address, city, state, and ZIP code K-TRON INTERNATIONAL RT 55 & 553 PITMAN NJ 08071		1 Rent $		
		2 Royalties $		
PAYER'S Federal Identification Number 22-1759452	*RECIPIENT'S* identification number 319-36-5544	3 Prizes and awards $	4 Federal income tax withheld $	Copy C for Payer or State Copy For Paperwork Reduction Act Notice and instructions for completing this form, see instructions for Forms 1099, 1098, 5498, 1096, and W-2G
RECIPIENT'S name, address, and ZIP code DR. PAUL KALATA 229 SAWMILL ROAD CHERRY HILL NJ 08034		5 Fishing boat proceeds $	6 Medical and health care payments $	
		7 Non employee compensation $20800.00	8 Substitute payments in lieu of dividends and interest $	
		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale. . . . ☐		
Account number (optional)		10 Crop insurance proceeds . . ☐		

☐VOID ☐CORRECTED

PAYER'S name, street address, city, state, and ZIP code K-TRON INTERNATIONAL RT 55 & 553 PITMAN NJ 08071		1 Rent $	OMB No. 15450115 1990 Miscellaneous Income Statement for Recipients of	
		2 Royalties $		
		3 Prizes, awards,etc. $		
PAYER'S Federal Identification Number 22-1759452	*RECIPIENT'S* identification number 319-36-5544	4 Federal income tax withheld $	5 Fishing boat proceeds $	
RECIPIENT'S name, address, and ZIP code DR. PAUL KALATA 229 SAWMILL ROAD CHERRY HILL NJ 08034		6 Medical and health care payments $	7 Non employee compensation $7025.00	Copy 1 For State Tax Depart-ment
		8 Substitute payments in lieu of dividends and interest $	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale. . . . .☐	
		10 Crop insurance proceeds $		
Account number (optional)		12 State/Payer's state number		

(begin letterhead)
WILLIAM P. BERRIDGE
JAMES A. OLIFF

KIRK M. HUDSON
THOMAS J. PARDINI
EDWARD P. WALKER
JAMES C. LYDON
CHRISTOPHER L. MCKEE
KEVIN C. BROWN
CATHERINE M. VOORHEES
OF COUNSEL
GEORGE A. MONTANYE
WILLIAM M. NUGENT (CA.,D.C. BARS)

TELEPHONE
(703) 836-6400

MAILING ADDRESS
P.O. Box 19926
ALEXANDRIA, VIRGINIA 22320

TELEX: 90-1799 PTO ALEX
CABLE "PARKLIFF" WASHINGTON,D.C.
FACSIMILE: (703) 836-2767

Oliff & Berridge
ATTORNEYS AT LAW
277 SOUTH WASHINGTON STREET
ALEXANDRIA, VIRGINIA 22134

(end letterhead)

April 26, 1990
Dr. Paul R. Kalata
Mr. Robert T. Morein
ECE Department
Drexel University
32nd and Chestnut
Philadelphia, PA 19104

VIA COURIER

Re: U.S. Patent Application No. 07/496,926
"FILTERLESS METHOD AND APPARATUS FOR NOISE IDENTIFICATION IN STOCHASTIC CONTROL SYSTEMS" -- MOREIN et al.
OUR REF: JAO26333

Gentlemen:

Further to our March 22 letter, enclosed is a Declaration form for execution by both of you and return to us for filing in the Patent and Trademark Office to complete the application papers. Also enclosed for execution by Dr. Kalata is an Assignment in connection with his joint ownership interest in the above-identified application as was previously discussed. Please sign the Assignment before two witnesses and have the witnesses date and sign the Assignment in the spaces provided at the bottom of the form[1] .

The deadline for filing the Declaration in the Patent and Trademark office is MAY 21, 1990.

[1]Alternatively, the Assignment can be signed before a notory public.

DREX 00180

As previously discussed, Mr. Morein and K-Tron should confirm what other further ownership arrangements, if any, are going to be concluded between the parties. In the meantime, we will handle prosecution of the application on behalf of both K-Tron and Mr. Morein.

We look forward to receipt of the executed forms prior to the May 21 due date. If you have any questions about any of the above, please do not hesitate to contact us.

Very truly yours,

OLIFF & BERRIDGE

S/Kirk
Kirk M. Hudson

KMH:dkm
Enclosures: Declaration Assignment
cc: Robert L. Weinberg w/ encls.

DREX 00181

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
In re the Application of
Robert T. MOREIN et *al* Group Art Unit:
Serial No.: 07/496,926 Examiner:
Filed: March 21, 1990
For: FILTERLESS METHOD AND APPARATUS FOR NOISE IDENTIFICATION FOR STOCHASTIC CONTROL SYSTEMS

INFORMATION DISCLOSURE STATEMENT

Honorable Commissioner of
Patent and Trademarks
Washington, D.C. 20231

Sir:

Pursuant to 37 CFR 1 .56, the attention of the Patent and Trademark Office is hereby directed to the following information:

1. The following copending applications name one of the coinventors herein and are directed to technically related subject matter:

a) Serial *No.* 07/496,765, filed March 21, 1990, which is referenced at page 4 of the present application.

b) Serial No. 07/230,415, filed August 10, 1988, which discloses a weigh feeding system with self-tuning stochastic control in which two separate material discharge rate estimates are respectively derived from a material weight measurement and a discharge actuator position or velocity measurement; and the two rate

estimates are combined to produce a further, improved estimate of the material discharge rate. The combined rate estimate is used to control the material discharge actuator to obtain a desired discharge rate. A noise model (noise process parameter) tuning procedure is used which calculates estimates of noise variances in a manner similar to that disclosed in U.S. Patent 4,893,262 (see below).

This identification of copending applications is not to be construed as a waiver of secrecy as to the cited applications now or upon issuance of the present application as a patent.

2. The references listed on the attached Form PTO-1449. The listing of a reference on the Form is not to be construed as an admission that the listed reference constitutes prior art to the present invention. One copy of each of the references is attached. The relevance of U.S. Patent 4,893,262 is discussed in the present application at pages 3-4. The relevance of the Mehra and Friedland references is discussed in the present application at pages 2-3. The Moghaddamjoo reference discloses another approach to noise estimation.

The above information is presented so that the Patent and Trademark Office mar,, in the first instance, determine any materiality to the claimed invention. See 37 CFR 1.104(a) and 1.106(b) concerning the PTO duty to consider and use any such information. It is respectfully requested that the information be expressly considered during the prosecution of this application, and that the references listed on the Form PTO1449 be made of record therein and appear among the "References Cited" on any patent to issue therefrom.

Respectfully submitted,

James A. Oliff
Registration No. 27,075
Kirk M. Hudson
Registration No. 27,562

Attorney Docket No.: JAO 26333
OLIFF & BERRIDGE
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

ASSIGNMENT

In consideration of the sum of one dollar ($1.00) and other good and valuable considerations paid to the undersigned, the undersigned agrees to assign, and hereby does assign, transfer and set over to K-TRON INTERNATIONAL, INC. of Routes 55 and553, Pitman, New Jersey 08071 (hereinafter designated as the Assignee) all of his right, title and interest for the United States, its territories, dependencies and possessions, in the invention, and all applications for patent and any Letters Patent which may be granted therefor, known as FILTERLESS METHOD AND APPARATUS FOR NOISE IDENTIFICATION IN STOCHASTIC (Case No. JAO 26333) for which the undersigned has executed an application for patent as a joint inventor in the United States of America, U.S. application Serial Number 07/496,926 filed March 21, 1990.

1) The undersigned agrees to execute all papers necessary in connection with the application and any continuing or divisional applications thereof and also to execute separate assignments in connection with such applications as the Assignee may deem necessary or expedient.

2) The undersigned agrees to execute all papers necessary in. connection with any interference which may be declared concerning this application or continuation or division thereof and to cooperate with the Assignee in every way possible in obtaining evidence and going forward with such interference.

3) The undersigned agrees to execute all papers and documents and perform any act which may be necessary in connection with claims or provisions of the International Convention of Protection of Industrial Property or similar agreements.

4) The undersigned agrees to perform all affirmative acts which may be necessary to obtain a grant of a valid United States patent to the Assignee.

5) The undersigned hereby covenants that he has full right to convey the entire interest herein assigned, and that he has not executed and will not execute, any agreement in conflict herewith.

6) The undersigned hereby grants the firm of OLIFF & BERRIDGE the power to insert on this assignment any further identification which may be necessary or desirable in order to comply with the rules of the United States Patent and Trademark Office for recordation of this document.

In witness whereof, executed by the undersigned on the date(s) opposite the undersigned name(s).

Date 5-3-90 Name of Inventor S/Paul R. Kalata
(SEAL)

This assignment should preferably be signed before: (a) a Notary Public if within the U.S.A. (b) a U.S. Counsul if outside the U.S.A. If neither, then if should be signed before at least two witnesses who also sign here:

Date (illegible) Witness S/ (illegible)

Date (illegible) Witness S/ (illegible)

ASSIGNMENT

(1-8) *Insert Name(s) of Inventors*

(1) Paul R. Kalata (5) _____
(2) _____ (6) _____
(3) _____ (7) _____
(4) _____ (8) _____

In consideration of the sum of one dollar ($ 1.00) and other good and valuable considerations paid to each of the undersigned, the undersigned agree(s) to assign. and hereby does assign, transfer and set over to

(9) *Insert name of Assignee*

K-TRON INTERNATIONAL, INC.

(10) *Insert address of Assignee*

(10) of Routes 55 and 553, Pitman, New Jersey 08071

(hereinafter designated as the Assignee) the entire right, title and interest for the United States, its territories. dependencies and possessions, in the invention, and all applications for patent and any Letters Patent which may be granted therefor, known as

(11)Insert Identification of Invention. such as Title, Case Number or foreign Application Number

(11) DIRECT METHOD AND APPARATUS FOR NOISE IDENTIFICATION IN STOCHASTIC CONTROL SYSTEMS (Case No. JAO 26169)

(12) Insert Date of Signing of Application	(12) on_____
(13) Alternative identification for filed applications	(13) U.S. application Serial Number 07/496,765 filed March 21, 1990

1) The undersigned agree(s) to execute all papers necessary in connection with the application and any continuing or divisional applications thereof and also to execute separate assignments in connection with such applications as the Assignee may deem necessary or expedient.

2) The undersigned agree(s) to execute all papers necessary in connection with any interference which may be deciamd concerning this application or continuation or division thereof and to cooperate with the Assignee in every way possible in obtaining evidence and going forward with such interference.

3) The undersigned agree(s) to execute all papers and documents and perform any act which may be necessary in connection with claims or provisions of the international Convention for Protection of Industrial Property or similar agreements.

4) The undersigned agree(s) to perform all affirmative acts which may be necessary to obtain a grant of a valid United States patent to the Assignee.

5) The undersigned hereby authorize(s) and request(s) the Commissioner of Patents to issue any and all Letters Patents of the United States resulting from said application or any division or divisions or continuing applications thereof to the said Assignee as Assignee of the entire interest and hereby covenants that he has (they have) full right to convey the entire interest herein

assigned, and that he has (they have) not executed and will not execute. any agreement in conflict herewith.

6) The undersigned hereby grant(s) the firm of OLIFF & BERRIDGE the power to insert on this assignment any further identification which may be necessary or desirable to order to comply with the rules of the United States Patent and Trademark Office for recordation of this document.

In witness whereof, executed by the undersigned on the dates) opposite the undersigned name(s).

Date 5/4/90 Name of Inventor S/Paul R. Kalata (seal)
Date_____Name of Inventor _____ (seal)
Date_____Name of Inventor _____ (seal)
Date_____Name of Inventor _____ (seal)
Date_____Name of Inventor _____ (seal)
Date_____Name of Inventor _____ (seal)
Date_____Name of Inventor _____ (seal)
Date_____Name of Inventor _____ (seal)

This assignment should preferably be signed before (a) a Notary Public if within the U.S.A. (b) a U.S. Counsul if outside the U.S.A. (illegible)

Date_____***Witness***_____
Date_____***Witness***_____

(begin letterhead)
WILLIAM P. BERRIDGE
JAMES A. OLIFF

KIRK M. HUDSON
THOMAS J. PARDINI
EDWARD P. WALKER
JAMES C. LYDON
CHRISTOPHER L. MCKEE
KEVIN C. BROWN
CATHERINE M. VOORHEES
OF COUNSEL
GEORGE A. MONTANYE
WILLIAM M. NUGENT (CA.,D.C. BARS)

TELEPHONE
(703) 836-6400

MAILING ADDRESS
P.O. Box 19926
ALEXANDRIA, VIRGINIA 22320

TELEX: 90-1799 PTO ALEX
CABLE "PARKLIFF" WASHINGTON,D.C.
FACSIMILE: (703) 836-2767

Oliff & Berridge
ATTORNEYS AT LAW
277 SOUTH WASHINGTON STREET
ALEXANDRIA, VIRGINIA 22134

(end letterhead)

December 18, 1990
Mr. Robert L. Weinberg
Vice President, Product Development
Manufacturing & Marketing
K-TRON INTERNATIONAL, INC.
Routes 55 and 553
Pitman, New Jersey 08071

Re: U.S. Patent Application No. 07/496,926
MOREIN et al - Our Ref.: JAO 26333

Dear Bob:

As I mentioned during our telephone conference on wrote to Mr. Morein regarding foreign filing to prevent later claiming that we failed to advise him of his rights.

It did not occur to us that you might regard the letter as creating a possible conflict of interest because it is clear from our past conversations with Mr. Morein that he has neither the inclination nor the funds to pursue prosecution of the application, anywhere. We thus regarded the offer of representation as a pro forma gesture. Further, in the unlikely event that he were to proceed with foreign filing, having us represent him would be to K-TRON's advantage because we could then most readily assure that K-TRON's interests are protected. (K-TRON would have a one-half interest in any application filed by him in view of Paul Kalata's assignments of his rights to K-TRON.)[1]

As a result, we did not think that there would be any objection by K-iron to the letter, and thus did not obtain your express approval prior to sending it. However, as we discussed, in order to avoid any future misunderstanding, we will in the future fully apprise you in advance of any proposed undertakings involving Mr. Morein.

[1]In undertaking to represent Mr. Morein, we would of course make clear to him that any such representation is subject to our previously existing representation of K-Tron.

(letterhead)
OLIFF & BERRIDGE

Mr. Robert L. Weinberg
December 18, 1990
Page 2

I thank you for your frankness and understand and apologize for the misunderstanding.

As always, please feel free to contact us immediately if you have any questions about any action we have taken. Best regards.

Very truly yours,

OLIFF & BERRIDGE
S/Kirk
Kirk M. Hudson

KMH: jpo

1570 Arran Way
Dresher, PA 19025
(215) 646-4894
June 6, 1991

Dr. Bruce Eisenstein
Chairman, ECE Department

Dear Dr. Eisenstein:

I, Robert Morein, am writing this letter partially on your suggestion that I should put in writing my difficulties with Dr Kalata. However, since I am encountering difficulty in securing a new thesis advisor, I request that you read this letter in entirety.

I began to work with Dr. Kalata in June of 1989 in the area of noise identification in linear systems. The work initially concerned analysis of the work of Bernard Friedland, and in particular, the problem of setting optimum gains for Friedland's observers. The work was not fruitful, and in October of 1989, I remained absent from Drexel for about two weeks. It was during this time that I conceived the idea of Finite Step Predictors (FSPs) for the purpose of noise identification.

Although Dr. Kalata had up to that point provided valuable orientation towards the problem in the context of Friedland's method, he did not contribute to the FSP idea at all. I presented the idea to him as a fait accompli when I returned from my absence. It is true that Dr. Kalata's questioning and probing were valuable in improving the presentation of the idea. However, at this point that Dr. Kalata made a disclosure which I consider improper and a violation of the fiduciary relationship which is incumbent upon every thesis advisor.

Dr. Kalata maintained a consulting relationship with a company called K-tron International, Inc. in Pitman, New Jersey. He stated to me that he was under contractual obligation to disclose to K-tron any work in "the field". Although he had not done any work for K-tron on noise identification at other than a rudimentary level, and in the context of a specific systems problem , It appears that he arbitrarily enlarged the definition of the disclosure area to include my basic algorithmic work.

I had expressed some interest in obtaining a patent on the algorithm. Since I could not afford the legal costs, I was interested in taking advantage of the University patent policy. Dr. Kalata indicated that K-tron would pay part of the patent costs if I would cooperate with them. The "cooperation" required that I cede a 50% interest in the patent to Dr. Kalata, who would award his share to K-tron.

Dr. Kalata informed me that a thesis advisor has certain "rights", which apparently include a 50% ownership in any patents derived from thesis work. Later, when I approached Dr. Geller in March of 1991, I learned that this was false, and that royalties were apportioned according to signed statements obtained from all participating parties. Furthermore, although Dr. Kalata may attempt to argue that he is in spirit a co-inventor, objective evidence exists that he has violated the University patent policy, as it was described to me by Dr. Geller.

Since I was determined to obtain my Ph.d degree, I acquiesced in the appropriation of the patent. I now have co-inventor rights to U.S. patent application No. 07/496,926, which are probably useless. Since the legal work is handled by K-tron's firm, any licensor would be aware only of K-tron as a patent owner. Furthermore, according to Dr. Geller, I cannot obtain an improvement

patent through the University, since I am not the sole owner.

Inspite of this conflict, the thesis work continued. However, I was irritated with Dr. Kalata's dictitorial manner during the editing of papers. He attempted to direct the research without understanding it As a result, I spent six fruitless months (June 1990 - December 1990) attempting to find an analytic form of performance estimate for the FSP method of noise identification.

It was about this time period that Dr. Kalata directed me to prepare a thesis proposal document which would have the following characteristics

a. cover every conceivable problem of noise identification.
b. there should be no consideration as to the time which would be required to complete the outlined program.
c. it would be a complete NSF grant proposal for which he would be the principle investigator.

I had no objection to helping Dr. Kalata raise money. In fact, I provided valuable illustrations for an SBIR (Small Business Innovative Research) proposal. However, I began to suspect that Dr. Kalata intended to retain me for a longer period of time than required to complete a reasonable and proper thesis program. He intimated that he wanted help in writing a book, for example.

During this period, Dr. Kalata's initially pleasant demeanor gradually gave way to pressure and scare tactics. We argued about the contents of several conference papers. A typical admondition upon starting another paper was "don't piss me off." I was also faced with the need to delicately disentangle myself from his technical ideas, which threatened to waste much time.

My conflict with Dr. Kalata began in ernest when I sought to limit the scope of the thesis proposal. The argument was protracted and emotional. I finally produced a 20 page document about December 1990. The style was modeled after an industrial SBIR proposal that Dr. Kalata had written. I did not suspect that the requirements of an academic thesis proposal were of an entirely different nature. This document was never reviewed by Dr. Kalata. In May of 1991, I presented the proposal to the thesis committee chaired by Dr. Kam.

The proposal was a failure for several reasons. I had personal problems which interfered with the preparation. However, Dr. Kalata never offered his services for rehearsal, claiming that he was too busy with some proposal he was writing. Thus the failure of the spoken proposal is the responsibility of both of us. However, Dr. Kalata cannot be excused for his failure to evaluate the written proposal, which I believe is a result of his pique at my failure to conform completely to demand that I write it as an NSF proposal according to his inappropriate specifications.

The committee expressed anger at the waste of their time. I was informed by the committee chairman, Dr. Kam, that a letter of criticism of Dr. Kalata was to be written. It was apparent that the committee thought that I was in need of close guidance. The committee had come to the conclusion that I could neither write nor speak, and that Dr. Kalata was remiss in lack of guidance.

In fact, the thesis proposal was a singular error. I had, on an ongoing basis, been preparing a comprehensive draft thesis document, which is far closer to the ideal form than the proposal. But now I was forbidden by both the committee and Dr. Kalata to show the committee any document without Dr. Kalata's "seal of approval." I was humiliated and had no formal recourse.

I did what I felt I had to do - I approached each committee member with the draft thesis and implored them to examine it. I was able to convince the committee members that I had been working fruitfully in a loose association with Dr. Kalata. The draft thesis is over 100 pages in length as of June 6, 1991, and is asymptotically approaching the impecable standards that I consider my goal.

The letter of criticism, however, had an irreversible effect upon my relationship with my thesis advisor. He had been capable of considerable latitude, but this vanished. Excessive direction of the research, and minute scrutiny leading to more excessive direction, became the hallmark. On particular point of friction had always been his refusal to give any Indication as to how close I might be to completion. He now became belligerent on this point It was now to him an obsession that the product viewed by the committee would be flawless. But since I have become familiar with other forms of obsessive behavior on his part, I distrusted his judgment on this point. I could obtain no reassurance from him.

The FSP concept is simple in principle, but it generates large amount of amorphous, patternless algebra. Performance of long algebraic calculations without making errors is difficult for me. Since Dr. Kalata intermittently demanded a multivariable implementation, I requested the purchase of a symbolic algebra program for the Macintosh, entitled 'Theorist", which has a list price of $250.

Dr. Kalata was, of course, within his rights to refuse to purchase the program. However, his refusal in this case was couched in humiliating homilies. My last request in this area was on Friday, May 31, 1991. At this time, Dr. Kalata became psychologically abusive in the extreme. I was so anxious to escape that I suggested that

perhaps he would not wish to graduate a student with my algebraic difficulties. To my horror, he agreed. I suggested that I had other skills, such as inventiveness and insight, which provided an alternate source of worth. I gently suggested that perhaps he had deficiencies as well. He acknowledged this, but stated that he had a "basic skill set."

The questioning now became particularly ugly, as he grilled me in search of other signs of mental deficiency. He now said the most psychologically sick thing I have ever heard a person of professional responsibility say. He asserted that I had invented my new idea in order to avoid reading a particularly hard journal article which we had once considered relevant Although I had once made a joking statement to that effect, he now asserted that I had cognitive and reading difficulties on a most basic level.

As I left the room, I felt sweat pouring down my arms. I went to my desk in 608 and tried to recover. Gradually, however, I began to conclude that Dr. Kalata was proving a psychological burden which I could no longer deal with. I therefore wish to bring to an end all professional interaction with Dr. Kalata, either as an advisor or a member of the thesis committee.

Dr. Kalata telephoned me at my home at 8 PM on June 4. At that time I revealed to him my decision to switch thesis advisors. At the same time, because I hoped that Dr. Kalata's general difficulties were a result of faulty self-perception, I attempted to counsel him on his errors In a general sense. I mentioned a number of complaints which I had heard, but I named no individuals.. I hoped that he would take my advice in a constructive way. Nevertheless, he was able to identify some of the persons involved from the context. The result is that he has attacked another person, using my name as

reference. I sincerely regret the effect my actions may have had on this other person.

Although our professional relationship has ended, Dr. Kalata has told me that I should stay away from Drexel except to pursue my thesis work. He has told me to stay away from room 608, although I have a desk in the room. His attacks, using my name, threaten my attempt to obtain another thesis advisor.

I have approached Dr. Allon Guez as a prospective advisor. Although he has not reached a decision, Dr. Guez has mentioned that there may be nontechnical reasons why he cannot serve in this role. I ask you to keep thIs letter available, should I have difficulty obtaining another thesis advisor. I have committed no crime, and I have spent five years at Drexel. Surely it would be a cruel fate for all this time to be wasted, and my career aborted.

Sincerely yours,
S/Robert Morein
Robert Morein

DREX 00221

(begin letterhead)
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(end letterhead)

July 10, 1991

Mr. Robert T. Morein
1570 Arran Way
Dresher, Pennsylvania 19025

Re: U.S. Patent Application No. 07/496,926
MOREIN et al - Our Ref.: JAO 26333

Dear Mr. Morein:

Further to our March 21 letter, the Patent and Trademark Office has now acted on the above identified application. A copy of the Office Action, dated June 19, 1991, is enclosed. The period for response to this Action expires SEPTEMBER 19, 1991.

The due date can be extended for up to an additional three (3) months. A government fee is required, the amount of which depends on the length of the extension.

We are currently confirming whether K-Tron desires to continue prosecution of the application, and we will let you know its decision. In the meantime, please let us know whether you have any desire to continue the prosecution in the event that K-Tron does not.

If you have any questions about any of the above, please do not hesitate to contact us.

Very truly yours,
OLIFF & BERRIDGE

Kirk M. Hudson

KMH/feb
Enclosure:
Office Action (without cited references)
cc: Mr. Robert L. Weinberg

DREX 00190

K-TRON INTERNATIONAL. INC.
'91 SEP 23 P 1:52

September 16, 1991

Kirk M. Hudson
OLIFF & BERRIDGE
Attorney's at Law
700 South Washington Street Alexandria, VA 22314
RE: JAO 26333/JAO 26169

Dear Kirk:

I am troubled by basis of rejection of JAO 26333 and JAO 26169. I suggest you interview the examiner regarding these cases and advise K-Tron.

As to Mr. Morein, limit your oversight to review materials he generates. Do not represent Mr. Morein nor actively assist him.

Thank You,
BW/cal
S/Bob Weinberg
Bob Weinberg

K-TRON INTERNATIONAL. INC.
ROUTES 55 AND 553 • PITMAN. NEW JERSEY 08071
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(end letterhead)

May 14, 1992

Mr. Robert T. Morein
1570 Arran Way
Dresher, Pennsylvania 19025

Re: U.S. Patent Application No. 07/496,926
MOREIN et al - Our Ref.: JAO 26333

Dear Mr. Morein:

Further to our October 24 reporting letter, K-Tron has now decided to discontinue further prosecution of the above identified application. Thus, if you desire to continue prosecution, you should arrange for your patent attorney to take over prosecution. In this connection, we request that a new power of attorney be filed in the application. A Final Rejection is currently pending, and the final due date for taking action is August 12, 1992. As is discussed in more detail below, the Examiner has indicated that the Final Rejection will be withdrawn and a new, non-final rejection will be issued.

To update you regarding the current status of the prosecution, enclosed are copies of:

1. A Supplemental Amendment which we filed after the October 21, 1991 Amendment previously reported to you to formalize claim amendments which the Examiner had indicated in a telephone interview would place the broad claims in condition for allowance.[1]

2. A Final Rejection which the Examiner issued following review of the amended claims by the Examiner's supervisor.

3. An Examiner Interview Summary Record reflecting a further Examiner interview which we conducted following receipt of the Final Rejection, and at which the Examiner and his supervisor agreed to allow the broad claims with further amendments.

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1 Claims 10-15, which claim the invention specifically in the context of weigh feeding, were indicated to be allowable, and were formally allowed in the February 12, 1992 Office Action (item 2).

(handwritten) "3393"

FAX

KTRON INTERNATIONAL, INC.

Date: 4/20/92

No. of pages: 2

Company: OLIFF & BERRIDGE
Attention: Kirk M. Hudson
From: Cathy Lindsley
Re: JAO 26169 & JAO 26333

Hello Kirk;

With regard to the above mentioned patent applications, Bob Weinberg has stated to "Advise Kirk to Stop".

See attached.

Sincere Regards,
S/Cathy

Routes 55 & 553, Pitman, NJ 08071 /
Tel. (609) 589-0500 / Fax (609) 582-7968

(begin letterhead)
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JAMES A. OLIFF

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(end letterhead)

May 14, 1992

Mr. Robert L. Weinberg
Executive Vice President, Strategic Planning, Marketing and Product Development F-TRON INTERNATIONAL INC.
Routes 55 and 553
Pitman, New Jersey 08071

Re: U.S. Patent Application KALATA -
Our Ref.: JAO 26169
and
U.S. Patent Application No. 07/496,926
MOREIN et al. - Our Ref.: JAO 26333

Dear Bob:

Confirming our April 23 telephone conference, in accordance with Cathy Lindsley's April 20 instruction letter, we will take no further action with respect to either of the above identified applications, even though claims directed to weigh feeding have been allowed in both cases. Thus, the cases will go abandoned after August 12, 1992 (unless, in the case of the '926 application, Mr. Morein elects to continue prosecution).

Enclosed is a copy of our letter to Mr. Morein advising him of K-Tron's decision not to continue prosecution of the '926 application.

Very truly yours,
OLIFF & BERRIDGE
S/Kirk
Kirk M. Hudson

KMH:tad

Enclosure:
May 14 letter to Mr. Morein

(begin letterhead)
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JAMES A. OLIFF

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(end letterhead)

June 12, 1992

Mr. Robert L. Weinberg
Executive Vice President, Strategic
Planning, Marketing and Product Development
K-TRON INTERNATIONAL, INC.
Routes 55 and 553
Pitman, New Jersey 08071

Re: U.S. Patent Application KALATA -
Our Ref.: JAO 26169
and
U.S. Patent Application No. 07/496,926
MOREIN et al. - Our Ref.: JAO 26333

Dear Bob:

Further to our May 14 letter, the Patent Office has gyrated yet again in its position on the above-identified two applications. Instead of issuing further rejections of the broad claims in each case, as the Examiner had previously indicated to us would be done (see our March 13 reporting letter), Notices of Allowance (copies enclosed) have now been received, allowing all of the pending claims in both cases.

Accordingly, please confirm whether you still desire that no further action be taken with respect to either application, or whether we should proceed with the steps necessary to have the patents issued, now that the broad claims have been allowed.

If we are to proceed with issuance of the patents, the Issue Fee in each case must be paid no later than SEPTEMBER 3, 1992.

In addition, it will be necessary to prepare formal drawings for the '926 application, and to make a minor drawing correction in the '765 application.

If no further action is to be taken with respect to the '926 (MOREIN et al.) application, please let us know as soon as

possible so that we may timely advise Mr. Morein of the Notice of Allowance.

Very truly yours,
OLIFF & BERRIDGE

Kirk M. Hudson

KMH:tad
Enclosures (via airmail):
Notices of Allowance (2)

(begin letterhead)
WILLIAM P. BERRIDGE
JAMES A. OLIFF

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(end letterhead)

August 18, 1992

VIA FACSIMILE

Ms. Cathy Lindsley
Research and Development
K-TRON INTERNATIONAL, INC.
Routes 55 and 553
Pitman, New Jersey 08071

Re: U.S. Patent Application KALATA -
Our Ref.: JAO 26169
and
U.S. Patent Application No. 07/496,926
MOREIN et al. - Our Ref.: (blacked out)

Dear Cathy:

Confirming your August 17 telephone and facsimile instructions, we will not pay the above-identified applications, thus allowing the applications to become abandoned.

Very truly yours,
OLIFF & BERRIDGE

Kirk M. Hudson

KMH:tad

Instructions to Docket Clerk

The following papers have been filed:

Description of paper: ABANDON PER CLIENT INSTRUCTION

Name of Applicant: MOREIN ET. AL.

Serial No: 07/496,926

Atty File No.: JA26333

Title (New Cases):

Sender's Initials: KMH;tad

Date of filing paper August 24, 1992

Old due date September 3, 1992

New due date none

SIGN HERE: S/KMH

FOR NEW CASES ONLY

Client or Associate K-TRON INTERNATIONAL, INC

(and their ref. No.)

Type of Invention_____ Attorney's Initials_____
(C,M,E, or D)

Assigned
to_____

Large Entity_____ Small Entity_____

White-to Docket Clerk
Yellow-for case file

REV. 4/89

NEW MATTER INTAKE FORM

Date: January 7, 1993

* Client Code: KTN

* Matter Number: 240 MISC (PAT TM) LIT GEN
001-9 (010-899) 900 - 999

* (GEN/LIT) RE: _____

* (PAT) Invention of: Robert T. Morein, Paul R. Kalata
_____

* (TM) Trademark: _____

* (PAT) Title of Invention: FILTERLESS METHOD AND
* (TM) Goods/Services : APPARATUS FOR NOISE
* (GEN/LIT) Action: : IDENTIFICATION IN
: STOCHASTIC CONTROL
: SYSTEMS

* (PAT/TM) Application Data : Appl. No. 496,926
Filed 3/21/90

*Client's
Reference: _____

* (LIT) Opposing Party: _____

Atty: _____

Comments: Abandoned per client instruction

ATTORNEY: ALN

DREXEL UNIVERSITY memo:

Electrical and Computer Engineering Department

June 5, 1995
TO: Provost Dennis Brown

FROM: Bruce A. Eisenstein, Department Head

RE: Kalata/Morein Patent Issue
I have had the opportunity to discuss this issue with Paul Kalata and to review the file which you provided me. Based on that review, I have the following comments about Mr. Morein's allegations.

Mr. Morein implies that Kalata "appropiated (sic)" the invention in question. The documentation which he supplied, however, shows that he, Morein, is the inventor of record. The sheet with Kalata's signature on it is page 2 of the document and Kalata's name is listed as second co-inventor. I understand that Morein's name appears as the first inventor on the missing page one. Furthermore the attached Information Disclosure Statement dated March 21, 1990 from James Oliff, Esq., K-tron's patent attorney, refers to the application of Robert T. Morein, et al and contains information concerning co-pending applications (from Kalata and K-tron) of which the attorney feels that the patent examiner should be aware.

Thus, despite the tone of the Morein letter, full credit is given to Morein for his invention. There is also no evidence that he was coerced in any way to providing this patent to K-tron since they absorbed the full cost of the patent and gave Morein full ownership.

As to the question of Drexel's patent policy, Dr. Kalata visited with Dr. Geller and, without putting words into Dr. Geller's mouth, the conclusion is that there is no violation of Drexel policy. Morein had no association with Drexel that would warrant his being under the University's patent policy, and Kalata was only a peripheral conduit to K-tron. My understanding is that the patent has never been employed and that it will not result in a product.

DREX 00642

DREXEL
UNIVERSITY

Provost and Senior Vice President for Academic Affairs
32nd and Chestnut Streets
Philadelphia,Pennsylvania
19104
TEL 215 895-2200, 2202

June 16, 1995
Mr. Robert Morein
1570 Arran Way
Dresher, PA 19025

Dear Mr. Morein:

I have reviewed the material which you forwarded to me with your letter of May 11, 1995. I have also spoken with the Vice Provost and the Chairman of the Department of Electrical and Computer Engineering.

I am satisfied that Dr. Fromm's review of your appeal was fair and appropriate. I am also satisfied that your department took steps above and beyond the normal procedures to support you in your efforts to pursue your degree.

With respect to your claim concerning your patent application, it is my understanding that you agreed to the contact with K-tron to determine whether they would pay for your patent application. Since you were named as inventor on the proposed patent application and K-tron was prepared to pay for the filing, I do not believe you were injured. In any event, since you have not treated the application as University research, the filing is a private and not a University matter.

Accordingly, I do not believe that any purpose would be served by my modifying Vice Provost's Fromm' s denial of your appeal.

Sincerely,
S/Dennis G. Brown
Dennis G. Brown
Provost and Senior Vice President
for Academic Affairs

DGB/yg

cc: Dr. Canavan
Vice Provost Fromm
Mr. Pennoni

DREX 00498

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Temple University
A Commonwealth University

College of Science and Technology
Department of Biology

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www.temple.edu/biology
(end letterhead)

April 12, 1999

EXPERT REPORT OF THOMAS R PUNNETT

Evaluation Process and Documents Reviewed

On this date I met with Faye Riva Cohen, Esquire, the attorney for Robert Morein, in a case in which he is the plaintiff and Drexel University and various administrators and faculty are the defendants. She provided for my review certain documents contained in a binder and listed as defendants' exhibits, as well as additional documents which she intends to introduce as plaintiffs exhibits. I reviewed the documents for the purpose of determining whether Mr. Morein had been treated in a manner consistent with academic standards, at least from the perspective of my experience at Temple University, in his quest for a Ph.D. I did not review any deposition or arbitration hearing transcripts.

I am not receiving any financial remuneration for my services, nor am I receiving any services-in-kind for my involvement. I do not have a personal relationship with Mr. Morein, although I have met him briefly on one occasion at a concert, and I spoke with him recently regarding this matter. However, his father is my long-time family dentist, and he has mentioned to me in the course of my visits for a period of time that his son was having difficulties in his pursuit of a Ph.D. at Drexel University. I offered my help when I was asked to be an expert based on that long-term relationship.

Qualifications

I have provided a copy of my curriculum vitae previously to Ms. Cohen, and I understand that she has forwarded a copy to defendants' attorney. I have been a member of the Temple University Biology Department faculty for thirty-five years, and during that course of time I served as acting chairman on two occasions. I have also served on the Graduate Committee of the Department, which supervises graduate affairs, for approximately twelve years, and I served as chair of that committee for four or five years. To update the c.v., the list of students whom I have supervised should be extended by eight, on both the masters and Ph.D. levels. Therefore I have had extensive hands-on experience in supervising graduate students.

Conclusions

I have reached the conclusion that Dr. Kalata's faculty/student relationship with Mr. Morein, based on the materials which I have read, is highly irregular in several respects. He appeared to appropriate at least a portion of Mr. Morein's work and use it potential conflict of interest with his supervisory arrangement with Mr. Morein. He did

not reveal the entirety of the agreement to Mr. Morein. Under the agreement Dr. Kalata appeared to agree to turn over any intellectual discovery in the field to K-Tron, even though in this case, the work was not solely his.

Dr. Kalata represented that he was entitled as a graduate advisor to receive a 50% ownership interest of Mr. Morein's work in the field automatically, which is unheard of in my experience as a graduate faculty member supervising graduate students. He appeared to pressure Mr. Morein into accepting the agreement if he wanted to receive his degree, which is an improper use of his authority as a graduate advisor. In general, it appears that there were serious issues regarding Dr. Kalata's behavior as a graduate advisor.

Second, after Mr. Morein complained about Dr. Kalata's actions, it was highly unusual, based on my experience, for Dr. Kalata to be named to the successor committee, given the bad relations between them. Further, it was unusual for Dr. Eisenstein to approve Dr. Kalata's suggestion of the establishment of said committee containing not only the estranged advisor and Dr. Kam, who was a former student and had a close relationship with Dr. Kalata. It appears to me that the negatively biased committee was established for the purpose of undermining Mr. Morein's candidacy rather than bolstering it.

In my professional experience, when a similar breakdown occurred between an advisor and student in my department some years ago, when I was acting chairman, another professor accepted him as a student, and the department approved his moving to another faculty advisor and made certain that he had the resources to complete his research, which enabled him to receive his

Ph.D. In my professional experience, it is not unusual for Ph.D. candidates to change advisors without hostility and retribution.

Third, from my review of the documents, I have reached the opinion, that although the administration at Drexel were made aware of the conflict of interest regarding the patent agreement involving Dr. Kalata, K-Tron and Mr. Morein, there is no evidence that Mr. Morein was consulted, and there is no evidence that the problem was seriously considered. In fact, the only consideration of the administration appeared to be whether Drexel would be embarrassed by this disclosure.

Fourth, it is obvious that as a result of his denial of a Ph.D., Mr. Morein has and will continue to suffer serious financial consequences and loss, because of the failure to achieve proper credentials. Similar to the field of electrical engineering, biology Ph.D.s are able to consult in private industry as well as teach. By denying Mr. Morein this right, Drexel University has seriously impacted his career and his earning power.

Dated: April 12, 1999

S/Thomas Punnett
Thomas R. Punnett, Ph.D